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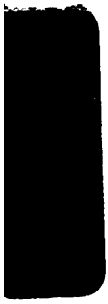

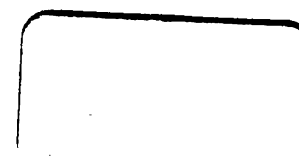

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A

COMPLETE COLLECTION

OF

State Trials

AND

PROCEEDINGS FOR HIGH TREASON AND OTHER CRIMES AND MISDEMEANORS

FROM THE

EARLIEST PERIOD TO THE YEAR 1783,

WITH NOTES AND OTHER ILLUSTRATIONS:

COMPILED BY

T. B. HOWELL, Esq. F.R.S. F.S.A.

INCLUDING,

IN ADDITION TO THE WHOLE OF THE MATTER CONTAINED IN THE

FOLIO EDITION OF HARGRAVE,

UPWARDS OF TWO HUNDRED CASES NEVER BEFORE COLLECTED;

TO WHICH IS SUBJOINED

A TABLE OF PARALLEL REFERENCE,

RENDERING THIS EDITION APPLICABLE TO THOSE BOOKS OF AUTHORITY IN WHICH REFERENCES ARE MADE TO THE FOLIO EDITION.

IN TWENTY-ONE VOLUMES.

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A COMPLETE COLLECTION

OF

STATE TRIALS,

&c. &c.

442. The Trial of HENRY SACHEVERELL, D. D. upon an Impeachment before the House of Lords, for High Crimes and Misdemeanors: 9 ANNE, A. D. 1710.

*AN ACCOUNT OF WHAT PASSED MOST REMARKABLE IN THE SESSIONS OF PARLIAMENT, 1709, 1710, IN THE HOUSE OF COMMONS, RELATING TO THE CASE OF DR. HENRY SACHEVERELL.**

December 13, 1709.

A COMPLAINT being made this day, in the House of Commons, of two printed Books, the one entituled, "The Communication of Sin; a Sermon preached at the Assizes held at Derby, August 15, 1709, by Dr. Henry Sacheverell:" And the other entituled, "The Perils of False Brethren both in Church and State; set forth in a Sermon preached before the right honourable the Lord Mayor, Aldermen, and Citizens of London, at the cathedral church of St. Paul, on the 5th of November, 1709," preached also by the said Dr. Henry Sacheverell †; and both printed for Henry Clements: which Books were delivered in at the table; where several paragraphs in the Epistle Dedicatory, preceding the first mentioned Book, and also several paragraphs in the latter Book, were read.

Resolved, That a Book entituled, "The Communication of Sin; being a Sermon preached at the Assizes held at Derby, August 15, 1709:" and a Book, entituled, "The Perils of False Brethren both in Church and State; set forth in a Sermon preached before the right honourable the Lord Mayor, Aldermen, and Citizens of London, at the cathedral church of St. Paul, on the 5th of November, 1709," are malicious, scandalous and seditious libels; highly reflecting upon her majesty and government, the late happy Revolution, and the Protestant Succession as by law established, and both Houses of Parliament; tending to alienate the affections of her majesty's good subjects, and to create jealousies and divisions among them.

Ordered, That Dr. Henry Sacheverell, and Henry Clements, do attend at the bar of the House to-morrow.

* This very prejudiced account, drawn up, perhaps, by Salmon, is copied from the former editions; in which it was inserted in vol. 8, with a notice that it should be read before the Trial, which had been inserted in vol. 5. Concerning forms of procedure, see what material occurred as to this Case in the Journal, as referred to, 4 Hats. Prec.

† Upon this occasion bishop Kennet, then dean of Peterborough (see the article Kennet in the Biographia Britannica) published a True Answer to Dr. Sacheverell's Sermon, &c. in a letter addressed to an alderman of the city. It is worth perusal.

The doctrines, concerning the question of Resistance and the Revolution of 1688, which were in this case asserted by the Managers for the Commons, form the ground-work of Mr. Burke's 'Appeal from the New to the Old Whigs.' At the present period, the unqualified doctrine of Non-Resistance appears to be abandoned; though much difference of opinion may subsist, as to the cases in which Resistance is justifiable. Blackstone's observations on the matter are well worthy of attention:

"As to such public oppressions as tend to dissolve the constitution, and subvert the fundamentals of government, they are cases, which the law will not, out of decency, suppose: being incapable of distrusting those, whom it has invested with any part of the supreme power; since such distrust would render the exercise of that power precarious and impracticable. For, wherever the law expresses its distrust of abuse of power, it always vests a superior coercive authority in some

and no wonder that a true son of the Church of England should express himself with some warmth and vehemence against the liberties that were taken, and with impunity, to revile the Church, her doctrines and ministers, to blaspheme the name of God, and to insult, and treat with contempt, every thing that is sacred. To this little was returned, besides bitter invec-

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popular measures, which might create the occasion, and encourage the queen in the resolution, to change her parliament and ministry in 1710." Swift, vol. 5, p. 81. See also Swift, vol. 22, p. 62, vol. 23, p. 150.

I observe that after the period of Sacheverell's silence had expired, he preached before the House of Commons, on the 29th of May 1713, and on the next day he received the thanks of the House for his sermon, and was desired to print it.

Of the Doctor's mathematical knowledge, the following proof is stated in the Encyclopædia Britannica, (art. 'Sorcery') to occur in one of his compositions. "They concur like parallel lines meeting in one common centre." The same thing is related in Number 59, of the "Review of the State of the British Nation," for the year 1709, written I suppose by De Foe, and elsewhere in animadversions upon Sacheverell's conduct and his trial. In this work the blunder is exposed in the following epigram, such as it is:

"As brother Creech hung in the sacred twine,
So may it please this reverend wise divine
To hang himself, 'twould make a parallel line.
Then my credit, and all but my soul, I would venture,
If the Scriptures are true, they will meet in the centre:
O how it would please our modern phanatics,
To see high-church hanging in such mathematics."

Of this Trial of Sacheverell, Swift in his "Enquiry into the Behaviour of the Queen's last Ministry," says, that "it was a general muster of both parties." And in his "Considerations upon the Death of the Queen," he says, that "it drew the populace as one man into the party against the ministry and parliament."

In Swift's Correspondence is a Letter from Sacheverell, dated January 31, 1712, by which it appears that Swift had "been pleased to undertake the generous office of soliciting my good lord treasurer's favour" in Sacheverell's behalf. The writer also says, "I should be proud of an opportunity of expressing my gratitude to that eminent patriot" [Mr. Secretary St. John,] "for whom no one that wishes for the welfare of his church or country, can have too great a veneration."

The following is Burnet's account of the proceedings against Sacheverell:

"The great business of this session, that took up most of their time, and that had great effects in conclusion, related to Dr. Sacheverell: this being one of the most extraordinary transactions in my time, I will relate it very copiously. Dr. Sacheverell was a bold insolent man, with a very small measure of religion, virtue, learning, or good sense, but he resolved to force himself into popularity and preferment, by the most petulant railings at Dissenters, and Low-Churchmen, in several Sermons and Libels, wrote without either chasteness of stile, or liveliness of expression: all was one unpractised strain of indecent and scurrilous language. When he had pursued this method for several years without effect, he was at last brought up by a popular election to a church in Southwark, where he began to make great reflections on the ministry, representing that the Church was in danger, being neglected by those who governed, while they favoured her most inveterate enemies. At the assizes in Derby (where he preached before the judges) and on the fifth of November (preaching at St. Paul's in London) he gave a full vent to his fury, in the most virulent declamation, that he could contrive, upon these words of St. Paul's, 'Perils from false brethren;' in which, after some short reflections upon Popery, he let himself loose into such indecencies, that both the man and the Sermon were universally condemned: he asserted the doctrine of Non-Resistance in the highest strain possible, and said, that to charge the Revolution with Resistance, was to cast black and odious imputations on it; pretending, that the late king had disowned it, and cited for the proof of that, some words in his Declaration, by which he vindicated himself from a design of conquest. He poured out much scorn and scurrility on the Dissenters, and reflected severely on the Toleration; and said the Church was violently attacked by her enemies, and loosely defended by her pretended friends: he animated the people to stand up for the defence of the Church, for which he said he sounded the trumpet, and desired them to put on the whole armour of God. The court of aldermen refused to desire him to print his Sermon; but he did print it, pretending it was upon the desire of Garrard, then lord mayor, to whom he dedicated it, with an inflaming epistle at the head of it. The party, that opposed the ministry, did so magnify the Sermon, that, as was generally reckoned, about 40,000 of them were printed, and dispersed over the nation. The queen seemed highly offended at it, and the ministry looked on it as an attack made on them, that was not to be despised. The lord treasurer was so described, that it was next to the naming him, so a parliamentary impeachment was resolved on; Eyre, then solicitor general, and others, thought the short way of burning the Sermon, and keeping him in prison during the session, was the better method; but the more solemn way was unhappily chosen.

"There had been, ever since the queen

tives against the Sermons; and particularly against the doctrines of Passive Obedience and Non-Resistance.

December 14.

The House being informed, that Dr. Henry Sacheverell and Henry Clements attended, according to order; Dr. Sacheverell was called in, and, at the bar, was examined touching the two Sermons yesterday complained of to the House: where he owned the preaching, the directing of the printing and publishing the Sermon, preached the 5th of November, 1709, at the cathedral church of St. Paul, and the

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came to the crown, an open revival of the doctrine of Passive-Obedience and Non-Resistance, by one Lesley, who was the first man that began the war in Ireland; saying, in a speech solemnly made, that king James, by declaring himself a papist, could no longer be our king, since he could not be the Defender of our Faith, nor the head of our church, dignities so inherent in the crown, that he who was incapable of these, could not hold it: a copy of which speech, the present archbishop of Dublin told me he had, under his own hand. As he animated the people with this speech, so some actions followed under his conduct, in which several men were killed; yet this man changed sides quickly, and became the violentest Jacobite in the nation, and was engaged in many plots, and in writing many books against the Revolution, and the present government. Soon after the queen was on the throne, he, or his son as some said, published a series of weekly papers under the title of the Rehearsal, pursuing a thread of arguments in them all, against the lawfulness of Resistance, in any case whatsoever; deriving government wholly from God, denying all right in the people, either to confer, or to coerce it: the ministers connived at this, with what intention God knows.

"Whilst these seditious papers had a free course for many years, and were much spread and magnified; one Hoadly, a pious and judicious divine, being called to preach before the lord mayor, chose for his text the first verses of the 13th chapter to the Romans, and fairly explained the words there, that they were to be understood only against resisting good governors, upon the Jewish principles; but, that those words had no relation to bad and cruel governors: and he asserted, that it was not only lawful, but a duty incumbent on all men, so resist such; concluding all with a vindication of the Revolution, and the present government. Upon this, a great outcry was raised, as if he had preached up rebellion; several books were wrote against him, and he justified himself, with a visible superiority of argument, to them all, and did so solidly overthrow the conceit of one Filmer, now espoused by Lesley (that government was derived by primogeniture from the first patriarchs) that for some time, he silenced his adversaries: but it was an easier thing to keep up a clamour, than to write a solid answer. Sacheverell did, with great virulence, reflect on him, and on one, and several other bishops, carrying his venom as far back as to archbishop Grindal, whom, for his moderation, he called a perfidious prelate, and a false son of the church.

When it was moved to impeach him, the lord mayor of London, being a member of the House of Commons, was examined to this point, whether the Sermon was printed at his desire or order; upon his owning it, he would have been expelled the House; but he denied he had given any such order, though Sacheverell affirmed it, and brought witnesses to prove it: yet the House would not enter upon that examination; but it was thought more decent to seem to give credit to their own member, though indeed few believed him." [But as to this see in the text the account of what passed in the House of Commons.]

"Some opposition was made to the motion for impeaching Sacheverell, but it was carried by a great majority: the proceedings were slow; so those, who intended to inflame the city and the nation upon that occasion, had time sufficient given them, for laying their designs: they gave it out boldly, and in all places, that a design was formed by the Whigs, to pull down the Church, and that this prosecution was only set on foot to try their strength; and that, upon their success in it, they would proceed more openly. Though this was all falsehood and forgery, yet it was propagated with so much application and zeal, and the tools employed in it, were so well supplied with money (from whom was not then known) that it is scarce credible how generally it was believed.

"Some things concurred to put the vulgar in ill humour; it was a time of dearth and scarcity, so that the poor were much pinched: the summer before, ten or twelve thousand poor people of the Palatinate, who were reduced to great misery, came into England; they were well received and supplied, both by the queen, and by the voluntary charities of good people: this filled our own poor with great indignation; who thought those charities, to which they had a better right, were thus intercepted by strangers; and all who were ill affected, studied to heighten these their resentments. The clergy did generally espouse Sacheverell, as their champion, who had stood in the breach; and so they reckoned his cause was their own. Many Sermons were preached, both in London and in other places, to provoke the people, in which they succeeded beyond expectation. Some accidents concurred to delay the proceedings; much time was spent in preparing the Articles of Impeachment: and the Answer was, by many shifts, long delayed: it was bold, without either submission or common respect; he justified every thing in his Sermon, in a very haughty and assuming stile. In conclusion, the Lords ordered

Dedication of it; and also, that the Epistle Dedicatory to the Sermon, preached at the Assizes at Derby, the 15th of August, 1709, was agreeable to that which he put to the impression of that Sermon, which he directed to be printed and published. And being withdrawn, and a question being proposed, That the said Dr. Henry Sacheverell be impeached of High

the Trial to be at the bar of their House; but those who found, that by gaining more time, the people were still more inflamed, moved that the Trial might be public in Westminster-hall; where the whole House of Commons might be present: this took so with unthinking people, that it could not be withstood, though the effects it would have, were well foreseen: the preparing Westminster-hall was a work of some weeks.

"At last, on the 27th of February, the Trial begun. Sacheverell was lodged in the Temple, and came every day with great solemnity in a coach to the Hall; great crowds ran about his coach, with many shouts, expressing their concern for him in a very rude and tumultuous manner. The Trial lasted three weeks, in which all other business was at a stand; for this took up all mens thoughts: the Managers for the Commons opened the matter very solemnly: their performances were much and justly commended: Jekyll, Eyre, Stanhope, King, but above all Parker, distinguished themselves in a very particular manner: they did copiously justify both the Revolution, and the present administration. There was no need of witnesses; for the Sermon being owned by him, all the Evidence was brought from it, by laying his words together, and by shewing his intent and meaning in them, which appeared from comparing one place with another. When his counsel, sir Simon Harcourt, Dodd, Phipps, and two others, came to plead for him, they very freely acknowledged the lawfulness of Resistance in extreme cases, and plainly justified the Revolution, and our deliverance by king William: but they said, it was not fit, in a sermon, to name such an exception; that the duties of morality ought to be delivered in their full extent, without supposing an extraordinary case: and therefore Sacheverell had followed precedents, set by our greatest divines, ever since the Reformation, and ever since the Revolution. Upon this they opened a great field; they began with the declarations made in king Henry the 8th's time; they insisted next upon the Homilies, and from thence instanced in a large series of bishops and divines, who had preached the duty of submission and Non-Resistance, in very full terms, without supposing any exception; some excluding all exceptions, in as positive a manner as he had done: they explained the word Revolution, as belonging to the new settlement upon king James's withdrawing; though in the common acceptation, it was understood of the whole transaction, from the landing of the Dutch army, till the settlement made by the Convention. So they understanding the Revolution in that sense, there was indeed no Resistance there: if the passage quoted from the Declaration, given out by the late king, while he was Prince of Orange, did not come up to that, for which he quoted it; he ought not to be censured because his quotation did not fully prove his point. As for his invective against the Dissenters and the Toleration, they laboured to turn that off, by saying, he did not reflect on what was allowed by law, but on the permission of, or the not punishing many, who published impious and blasphemous books; and a collection was made, of passages in books, full of crude impiety and of bold opinions. This gave great offence to many, who thought that this was a solemn publishing of so much impiety to the nation, by which more mischief would be done, than by the books themselves; for most of them had been neglected, and known only to a small number, of those who encouraged them: and the authors of many of these books had been prosecuted and punished for them. As to those parts of the Sermon, that set out the danger the Church was in, though both Houses had some years ago voted it a great offence, to say it was in danger, they said it might have been in none four years ago, when these votes passed, and yet be now in danger: the greatest of all dangers was to be apprehended, from the wrath of God for such impieties. They said, the reflections on the administration were not meant of those, imployed immediately by the queen, but of men in inferior posts: if his words seemed capable of a bad sense, they were also capable of a more innocent one; and every man was allowed to put any construction on his words, that they could bear. When the counsel had ended their Defence, Sacheverell concluded it with a speech, which he read with much bold heat; in which, with many solemn asseverations, he justified his intentions towards the queen and her government; he spoke with respect, both of the Revolution and the Protestant Succession; he insisted most on condemning all Resistance, under any pretence whatsoever, without mentioning the exception of extreme necessity, as his counsel had done: he said it was the doctrine of the Church, in which he was bred up; and added many pathetical expressions, to move the audience to compassion. This had a great effect on the weaker sort, while it possessed those, who knew the man and his ordinary discourses, with horror, when they heard him affirm so many falsehoods with such solemn appeals to God. It was very plain the speech was made for him by others; for the stile was correct, and far different from his own.

"During the Trial, the multitudes that followed him, all the way as he came, and as he went back, shewed a great concern for him, pressing about him, and striving to kiss his hand: money was thrown among them; and

Crimes and Misdemeanours; he was called in again, and asked, If he had any thing to offer to the House? When he spoke to this effect:

"Mr. Speaker; I am very sorry I am fallen under the displeasure of this House; I did not imagine any expressions in my Sermons were liable to such a censure as you have passed upon them. If you had been pleased to have favoured me so far, as to have heard me before you passed it, I hope I should have explained myself so as to have prevented it."

And after being heard, he was directed to withdraw.

Then the question was insisted on, for impeaching the Doctor of High Crimes and Misdemeanours. And several gentlemen spoke against it, desiring he might rather be prosecuted by the attorney general; and if the Sermons were seditious, if they did reflect on her majesty and government, the happy Revolution, and the Protestant Succession as by law established, the Doctor would be convicted, and

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they were animated to such a pitch of fury, that they went to pull down some Meeting-houses, which was executed on five of them, as far as burning all the pews in them. This was directed by some of better fashion, who followed the mob in hackney coaches, and were seen sending messages to them: the word, upon which all shouted, was "The Church and Sacheverell:" and such, as joined not in the shout, were insulted and knocked down: before my own door, one, with a spade, cleft the skull of another, who would not shout as they did. There happened to be a meeting-house near me, out of which they drew every thing that was in it, and burned it before the door of the house. They threatened to do the like execution on my house; but the noise of the riot coming to court, orders were sent to the guards to go about, and disperse the multitudes, and secure the public peace. As the guards advanced the people ran away; some few were only taken; these were afterwards prosecuted; but the party shewed a violent concern for them; two of them were condemned as guilty of high-treason; small fines were set on the rest; but no execution followed; and after some months, they were pardoned: and indeed this remissness, in punishing so great a disorder, was looked on as the preparing and encouraging men to new tumults. There was a secret management in this matter, that amazed all people: for though the queen, upon an address made to her by the House of Commons, set out a Proclamation, in which this riot was, with severe words, laid upon Papists and Nonjurors, who were certainly the chief promoters of it; yet the proceedings afterwards did not answer the threatenings of the Proclamation.

"When Sacheverell had ended his Defence, the Managers for the House of Commons replied, and shewed very evidently that the words of his Sermon could not reasonably bear any other sense, but that for which they had charged him; this was an easy performance, and they managed it with great life: but the humour of the town was turned against them, and all the clergy appeared for Sacheverell. Many of the queen's chaplains stood about him, encouraging and magnifying him; and it was given out, that the queen herself favoured him; though, upon my first coming to town, which was after the Impeachment was brought up to the Lords, she said to me, that it was a bad Sermon, and that he deserved well to be punished for it. All her ministers, who were in the House of Commons, were named to be managers, and they spoke very zealously for public liberty, justifying the Revolution. Holt, the lord chief justice of the King's-bench, died during the trial: he was very learned in the law, and had upon great occasions shewed an intrepid zeal in asserting its authority; for he ventured on the indignation of both Houses of Parliament by turns, when he thought the law was with him: he was a man of good judgment and great integrity, and set himself with great application to the functions of that important post. Immediately upon his death Parker was made lord chief justice: this great promotion seemed an evident demonstration of the queen's approving the prosecution; for none of the managers had treated Sacheverell so severely as he had done; yet secret whispers were very confidently set about, that though the queen's affairs put her on acting the part of one, that was pleased with this scene, yet she disliked it all, and would take the first occasion to shew it.

"After the trial was ended, the debate was taken up in the House of Lords: it stuck long on the first article; none pretended to justify the Sermon, or to assert absolute non-resistance: all who favoured him, went upon this, that the duty of obedience ought to be delivered in full and general words, without putting odd exceptions, or supposing odious cases: this had been the method of all our divines. Pains were also taken to shew, that his Sermon did not reflect on the Revolution: on the other hand, it was said that since the Revolution had happened so lately, and was made still the subject of much controversy, those absolute expressions did plainly condemn it. The Revolution was the whole progress of the turn, from the prince of Orange's landing, till the act of settlement passed. The act of parliament expressed, what was meant, by the abdication and the vacancy of the throne; that it did not only relate to king James's withdrawing himself, but to his ceasing to govern according to our constitution and laws, setting up his mere will and pleasure as the measure of his government: this was made plainer, by another clause in the acts then passed, which provided, that if any of our princes should become Papists, or marry Papists, the subjects were, in those cases, declared to be free from their allegiance."

There is a curious passage about Sacheverell in Harris's James 2nd, p. 184.

punished for them according to his demerits. But if (as common fame said) the judges and the queen's learned counsel, had been consulted, and were of opinion, the Doctor could not be punished for them by the ordinary proceedings in the courts of law; they thought it was very unreasonable, by an impeachment in parliament, to endeavour to make a man guilty, and a criminal, that, by the laws of the land, was innocent.

However, it was resolved, That the said Dr. Henry Sacheverell be impeached of High Crimes and Misdemeanours.

Ordered, That Mr. Dolben do go to the Lords, and at their bar, in the name of all the Commons of Great Britain, impeach the said Dr. Henry Sacheverell of High Crimes and Misdemeanors, and acquaint the Lords, that the House will, in due time, exhibit Articles against the said Henry Sacheverell.

Ordered, That a committee be appointed to draw up Articles of Impeachment against the said Dr. Henry Sacheverell.

And a committee was appointed accordingly. And they have power to send for persons, papers and records, and to sit *de die in diem.*

Then Henry Clements was called in, and, at the bar, was examined touching his printing and publishing the said two Books: which he owned, and that he had the copies of them from Dr. Sacheverell. After which he was directed to withdraw.

Ordered, That the said Dr. Henry Sacheverell be taken into the custody of the serjeant at arms attending the House.

Sir Samuel Gerrard, bart. lord mayor of the city of London, was in the House, in his place: and the Speaker observing to the Doctor, that the House took notice, he had affirmed, in the Epistle Dedicatory to my lord mayor of London, before the Sermon preached at St. Paul's, that he had published it by his lordship's command, he was asked, Whether my lord mayor did command him to publish his Sermon? To which he answered, "That, in the strict sense of the word 'command,' he did not; but in the common acceptation of the word, as the desires of superiors to their inferiors are said to be 'commands,' he did 'command' him; for he did desire and press him to print it." Then he gave a particular account of the conversation he had, at several times, with my lord mayor about it; though his lordship thought fit peremptorily to deny it.

After this, the two following Resolutions passed:

Resolved, That the rev. Mr. Benjamin Hoadley,* rector of St. Peter Poor, London, for having often strenuously justified the principles on which her majesty and the nation proceeded in the late happy Revolution, hath justly merited the favour and recommendation of this House.

Resolved, That an humble Address be presented to her majesty, that she will be graciously pleased to bestow some dignity in the Church on the said Mr. Hoadley, for his eminent services both to Church and State.

These were proposed by An. Henley, esq. and seconded by sir Jos. Jekyll. The House was in great confusion, it being late, and every one expecting immediately to rise. However, there were several negatives to these Resolutions: and when they came to be considered, they were generally thought to be strange Resolutions, with regard to her majesty, who had approved a Sermon preached before her by the bishop of Exon, and desired him to print it. Against that Sermon Mr. Hoadley writ, and engaged in controversy with the bishop; yet he is declared to have justly merited the favour and recommendation of the House, and the queen is desired to bestow some dignity in the Church on him for these eminent services. This proceeding was thought so improper, so indecent to her majesty, that several, who were otherwise against Dr. Sacheverell, blamed it very freely. And it was very observable, Mr. Lechmere took an occasion, some time after, upon another debate, to censure it.

December 15.

Ordered, That Mr. Dolben (when he goes to the Lords to impeach Dr. Henry Sacheverell of High Crimes and Misdemeanours) do acquaint the Lords, That the said Henry Sacheverell is in custody of the serjeant at arms attending the House, ready to be delivered to the gentleman usher of the black rod, when the Lords shall please to give order therein.

Mr. Dolben reported to the House, That he had, pursuant to their order, been at the Lords; and, at their bar, had impeached Dr. Henry Sacheverell of High Crimes and Misdemeanors; and had also acquainted the Lords with their other order.

December 17.

A Petition of Henry Sacheverell, D. D. in custody of the serjeant at arms attending the House, was presented to the House, and read; praying, That the House would be pleased to order him to be admitted to bail, that he may have an opportunity of making his defence, being informed, that he is impeached at the bar of the House of Lords for High Crimes and Misdemeanors.

Ordered, That a committee be appointed to search precedents concerning the taking bail in cases of persons committed for High Crimes and Misdemeanors; and that they do make their Report thereof to the House upon Monday morning next.

Ordered, That it be referred to the Committee who are to draw up the Articles of Impeachment against Dr. Henry Sacheverell, to search precedents, and make report thereof to the House.

There was some debate before the House ordered a committee.

* The celebrated bishop of Bangor, Hereford, Salisbury, and Winchester.

December 19.

Mr. Dolben acquainted the House, That the committee, who were upon Saturday last appointed to search precedents concerning the taking bail in cases of persons committed for High Crimes and Misdemeanors, and to report the same to the House this day, had made all the progress they could in so short a time; but that they found it required more time, and had directed him to move, That they may have farther time to make their Report.

Ordered, That the said committee do search the Lords' Journals, in relation to the proceedings upon impeachments by the Commons, and make their Report thereof to the House with all convenient speed.

Ordered, That all committees be adjourned, except the committee who are appointed to draw up the Articles of Impeachment against Dr. Henry Sacheverell; and who are to search the Lords' Journals in relation to the proceedings upon impeachments by the Commons.

December 22.

Mr. Dolben reported, from the committee appointed to search precedents concerning the taking bail in cases of persons committed for High Crimes and Misdemeanors, and to search the Lords' Journals in relation to the proceedings upon impeachments by the Commons, and to make their Report to the House, That they had searched precedents, and the Lords' Journals accordingly; and had directed him to report what precedents they had found; which he read in his place, and afterwards delivered in at the table, where the same were read.

And a motion being made, and the question being put, That Dr. Henry Sacheverell be admitted to bail, according to the prayer of his Petition, it passed in the negative—Yeas 79, Noes 114.

In the debates on this matter, there was a great variety of opinions: Some thought the Commons might bail a person committed by them, but not in this case: Others, that it was discretionary in them, whether they would bail or not; and that this person deserved it not from them; and one that the Commons could never bail in any case. Others insisted, in favour of liberty, that if they could bail, they ought to bail: and that they could bail, argued from the equity and reasonableness of the thing, that those who could commit might bail: They shewed precedents in the case of Mr. Seymour, and the Smugglers, impeached for High Crimes and Misdemeanors; in one of which, the persons impeached and committed by the House of Commons, were admitted to bail; in the other, the Commons, upon their petition, consented to bail them; and they had been bailed, but their sureties made objections to the condition of their bonds, and would not submit to it. Besides it was urged, that this case was in itself bailable, and so agreed by all gentlemen; and that the Doctor's hardship might be the greater, because it was probable, if the Commons did not bail him, he must lie in custody, when bailable by law, till after the recess of parliament: For the Articles not being exhibited to the Lords against him, it was thought the Lords would not take him out of the custody of the Commons, and commit him upon a general charge; and till they committed him, they could not bail him. This was his case; for upon application to the Lords, they refused to commit him, till the Commons had exhibited their Articles: The Lords said, the Commons might never exhibit any; and they would not do so unreasonable a thing, as to commit any one on a general charge. And so he lay a prisoner by the commitment of the House of Commons, in a case bailable by law (and for which there were precedents, for the Commons admitting to bail), from Dec. 14, to Jan. 12. It is fitting to observe, That some urged against the bailing the Doctor, one part of the message delivered by Mr. Dolben to the Lords, when he impeached him at their bar, "That the Doctor was in custody of the serjeant at arms attending the House, ready to be delivered to the gentleman usher of the black-rod, when the Lords should please to give order therein:" But others, that agreed with them against admitting him to bail, approved of expedients to get off that, and did not think it reasonable to preclude him from it by their own message.

There was one thing in the debates gave some diversion to the House. An honourable member declaring himself against bailing Dr. Sacheverell, said, he would put them in mind of the case of Mr. Thompson: [*ante*, Vol. 8, p. 1.] He was a parson too; he was impeached by the Commons for High Crimes and Misdemeanors; he was bailed by them; he afterwards ran beyond sea, turned priest, and so evaded their justice; and he believed this fellow (as he was pleased to call him) would do so too. To this, another gentleman answered, He believed the noble lord was as much mistaken in his conclusion, as he was in his premises: He did not believe the Doctor would run away, if he was bailed: And as to the precedent of Mr. Thompson, the noble lord was mistaken in every part of it, except that he was a parson; for he was not bailed by the Commons, neither did he run beyond sea, and turn priest, and so evade their justice; for the parliament that impeached him was soon after dissolved; He was afterwards made dean of Bristol, and lived and died so.

January 9.

Mr. Dolben reported from the committee appointed to draw up Articles of Impeachment against Dr. Henry Sacheverell, that they had drawn up Articles accordingly, which they had directed him to report to the House: and he read them in his place, and afterwards delivered them in at the table, where they were read.

It was then proposed, that it being impossi-

ble the members could make their observations on the Articles in such readings, and the honour of the House being concerned to have them such as might be justified, a little time should be allowed, before they were read the second time, to consider them; and to convince others, they intended not delay by it, they only asked till Wednesday. This was ordered; but then it was moved, that no copies might be taken of the Articles, because it was not proper they should be made public in the coffee-houses, nor shewed to the Doctor, before they were agreed to, and carried up to the Lords. On the other hand, it was urged, this was precluding members of their right, by unreasonable suppositions; that they had a right to take copies of any papers before the House, for their information; and it was not to be imagined, they would publish the Articles in coffee-houses, or shew them to the Doctor. And, what if they did shew them to him? Were they to be kept a secret from him? Would he not have a copy of the Articles ordered him by the Lords, as soon as they were carried to them? And what advantage would it be to him, or disadvantage to the Commons, to see them sooner? But if copies were not to be taken of the Articles, it was no favour, no benefit to put off the consideration of them; it had an appearance of doing what was fair and reasonable, but would, in truth, be doing nothing; for without taking copies of them, they could not be considered. And it having been said, by one gentleman, that this was an extraordinary thing, and what had never been done before; another replied, he thought it extraordinary, but could not agree, it had never been done before; he remembered the like, when sir John Fenwick's confessions had been read in the House of Commons; they were ordered to be sealed up by the Speaker, that no copies might be taken of them. He did not approve that precedent so well as to follow it; he wished copies had been taken of those papers, and that they had been printed; he believed, the kingdom would have been the better for them at this day.

After these debates, this motion was waved.

January 11.

The order of the day being read, for the reading a second time the Report from the committee to whom it was referred to draw up Articles of Impeachment against Dr. Henry Sacheverell;

Ordered, That the Report be read paragraph by paragraph.

Then the first paragraph (being the preamble to the Articles) being read, and a motion being made, and the question being put, that the Report be re-committed; it passed in the negative.—Yeas 131, Noes 232.

Ordered, That candles be brought in; and candles were brought in accordingly.

Resolved, That the House doth agree to the said first paragraph.

Then the Articles being severally read, one by one, were (upon the question severally put thereupon) agreed unto by the House, to be the Articles to be exhibited against the said Dr. Henry Sacheverell.—Then the last paragraph being read, the same was also agreed unto by the House.—Ordered, That the Articles be engrossed.

There were great debates in relation to the re-committing the Articles of Impeachment. In which, great mistakes were shewn in the preamble to the Articles, the recitals partial, and wrong inferences drawn from them. And the Articles were said to be so loose and uncertain, it was impossible any one could plead to them; and it was pressed, that those who drew them up, would let the House know, on what paragraphs in the Sermon they were grounded. To this was answered, that was too early, when they only had the preamble under consideration; when the Articles were read, they would produce the passages in the Sermon. But then, though the passages were desired, they called for the question, and never performed what they had promised.

January 12.

The engrossed Articles of Impeachment against Dr. Henry Sacheverell were read.

Ordered, That the said Articles be carried to the Lords by Mr. Dolben.

At this time, there was no debate nor division upon the Articles, only a negative to the question of carrying them up to the Lords. Gentlemen saw how hardly they had been treated the day before by the majority, and therefore contented themselves with shewing their dislike of these proceedings in this manner.

Mr. Dolben carried these Articles to the Lords, who read them the first time, and took Dr. Sacheverell into the custody of the black-rod.

January 13.

The serjeant at arms acquainted the House, that, in pursuance of their order of the 15th of December last, he did yesterday deliver Dr. Henry Sacheverell to the deputy of the gentleman-usher of the black-rod; and had taken a discharge for him.

Dr. Sacheverell petitioned the Lords to be bailed. Their lordships ordered a committee to enquire into the validity of his bail; allowed him counsel, and a copy of the Articles.

January 14.

Dr. Sacheverell is ordered to give in his Answer to the Articles next Wednesday. The Lords accepted of Dr. Lancaster, vice-chancellor of Oxon, and Dr. Bowes, for his bail: and accordingly he was bailed, himself in a recognizance of 6,000*l.* and his sureties each in 3,000*l.*

Serjeant Prat, sir Simon Harcourt, Mr. Raymond, and Mr. Phipps, are allowed, by the Lords, to be counsel for Dr. Sacheverell; and Mr. Huggins to be his solicitor.

January 16.

Dr. Sacheverell, upon his petition, has farther time given him to put in his Answer.

January 25.

Dr. Henry Sacheverell attended the House of Lords and delivered in his Answer to the Articles of Impeachment against him; which was read. And being asked, whether or no he would abide by it? He answered in the affirmative; and then the Doctor was ordered to withdraw. Their lordships sent his Answer down to the Commons.

A Message from the Lords, by Mr. Rogers, and Mr. Hiccocks, that they were commanded to acquaint the House of Commons that Dr. Henry Sacheverell hath put in his Answer to the Articles of Impeachment, sent from the House of Commons against him; which their lordships communicate to the House, and desire that the said original Answer may be returned with convenient speed.

Ordered, That the said Answer of Dr. Henry Sacheverell, now sent from the Lords, be read to-morrow morning.

January 26.

The Answer of Dr. Henry Sacheverell, sent from the Lords yesterday, was according to order, read.—Ordered, That the Answer of Dr. Henry Sacheverell, sent from the Lords yesterday, be referred to the committee who were appointed to draw up Articles of Impeachment, which were exhibited by the Commons to the Lords, against Dr. Henry Sacheverell, for High Crimes and Misdemeanors; and that they do consider thereof, and report their opinion, what is most proper to be done towards the farther proceedings thereon. And they have power to send for persons, papers, and records. And they are to meet at such times and places as they shall think fit.

February 2.

Mr. Dolben reported from the Committee, to whom the Answer of Dr. Henry Sacheverell was referred to consider of the said Answer, and report their opinion, what is most proper to be done towards the farther proceedings thereon, that they had considered the same, and that they do find there are contained therein many things not warranted by the course of proceedings upon impeachments, foreign to the charge, unbecoming a person impeached, and plainly designed to reflect upon the honour of the House; and do humbly submit to the judgment of the House their opinion, that for avoiding any imputation of delay to the Commons, in a case of so great importance, a Replication be forthwith sent up to the Lords, maintaining the Charge of the Commons; and the committee have accordingly prepared the same, which they had directed him to report to the House; and he read the same in his place, and afterwards delivered the Report in at the table, where the same was read. And the Replication being read a second time, Resolved, That the said Replication be the Replication of the Commons to the Answer of Dr. Henry Sacheverell.

Ordered, That the Replication be engrossed.

There were debates in relation to the engrossing of the Replication; when the committee were desired to shew, that there was in Dr. Sacheverell's Answer, not warranted by the course of proceedings upon impeachments, foreign to the charge, unbecoming a person impeached, and plainly designed to reflect on the honour of the House.—The entering into these particulars was declined; for which reason, and because the Answer appeared full and satisfactory, there was a division upon engrossing the Replication; in which the Yeas were 182, the Noes 88.

February 3.

The engrossed Replication of the Commons to the Answer of Dr. Henry Sacheverell, was read.—Ordered, That the said Replication be sent to the Lords.—Ordered, That the original Answer be returned to the Lords.—Ordered, That Mr. Dolben do carry the original Answer of Dr. Henry Sacheverell, and the Replication thereunto, to the Lords.

February 4.

A Message from the Lords by sir Richard Holford and Mr. Gery, that they were commanded to acquaint the House of Commons, that their lordships have appointed Thursday next, at seven of the clock in the morning, for the Trial of Henry Sacheverell, Doctor in Divinity, at the bar of their House; and that their lordships will take care, that there will be conveniences made there for the managers of the House, at the Trial, upon the impeachment against him.—Resolved, That the Managers be appointed to make good the Articles of impeachment against Dr. Henry Sacheverell.—Ordered that the committee to whom it was referred to draw up the said Articles, be the said Managers.—Resolved, that this House will be present at the Trial of the Impeachment against Dr. Henry Sacheverell, as a committee of the whole House.—Ordered, that a Message be sent to the Lords, to acquaint them with the said Resolution, and to desire, that a convenient accommodation may be prepared for them. And, Ordered, That Mr. Bromley (who moved this matter) do carry the said Message to the Lords.

The House divided on this question, Yeas 192, Noes 180.

There was a long debate upon this Message; in which the several precedents of the cases of the earl of Strafford, and the lord viscount Stafford, were cited, whose trials were in the court prepared in Westminster-hall: And the case of the French Smugglers, impeached 1698, for High Crimes and Misdemeanours, when there were conferences, and free conferences between the Two Houses, about a convenient accommodation for the Commons to

be present at their Trial; which the Lords agreed to, being convinced by the reasons of the Commons. It was said, that the first regular trial upon an impeachment in parliament, in the present method, was the trial of the earl of Strafford; and the Commons declared and insisted, they had a right to be present at the Trial as an House, or a committee of the whole House, as they thought fit; and that they held it necessary and fit, that all the members of the House should be present at the Trial, to the end that every one may satisfy his own conscience, in the giving his vote to demand judgment. In the case of the lord viscount Stafford, the like accommodaton was never disputed; but in that of the Smugglers it was; and the Lords would have distinguished betwixt an Impeachment for High Crimes and Misdemeanours, and for High Treason: Which the Commons answered, shewing, that the different nature of those crimes related only to the punishment, and did not alter and change the nature of the court. And by the strength of this, and other arguments, which may be seen in the reports of the conferences, and free conferences, entered on their Journals, they did, at last, prevail.

February 6.

A Message from the Lords by Mr. Gery and Mr. Hiccocks, that the Lords had commanded them to acquaint the House, that their lordships have ordered the Lords with white staves, humbly to move her majesty from their House, that she will be pleased to give order for a place to be prepared in Westminster-hall, for their lordships to proceed upon the Trial of Henry Sacheverell, Doctor in Divinity, who now stands impeached before their House.

February 7.

The Lords received a Message from her majesty, that her majesty would give order for a place to be prepared in Westminster-hall, for their lordships to proceed upon the Trial of Henry Sacheverell, Doctor in Divinity, who now stands impeached before their House.

February 8.

A Message from the Lords by Mr. Medlycot and Mr. Fellows, that they were commanded by the Lords to acquaint the House, that her majesty hath given order, that a court be prepared in Westminster-hall, for the Trial of Dr. Henry Sacheverell; which will take up some time; and that therefore the Trial cannot be at the time appointed, but that as soon as the place is prepared, the House shall have notice of the day of trial.

February 10.

Ordered, that the Managers appointed to make good the Articles of Impeachment against Dr. Henry Sacheverell, have power to send for persons, papers, and records.—Ordered, That Mr. William Borret be appointed Solicitor to the said Managers, for prosecuting the said Impeachment.

February 15.

Serjeant Prat, and Mr. Raymond, having declined being counsel for Dr. Henry Sacheverell, the Lords, upon his petition, assigned him Mr. Dee, Mr. Dod, and Dr. Henchman, for his counsel; as also, sir Simon Harcourt, and Mr. Phipps, before allowed by their lordships; and Mr. Huggins his solicitor.

February 18.

The Lords appointed Monday come sevennight for the Trial of Dr. Henry Sacheverell.

The Trial, accordingly, began on Monday the 27th of February, which day, and the following days, a great concourse of people attended Dr. Sacheverell from his lodgings at the Temple, to Westminster, and at his return, with great acclamations and shouts, &c.

A Complaint was made in the House of Commons of these Riots. And,

March 2.

Resolved, That an humble Address be presented to her majesty, That she will be graciously pleased to take effectual measures to suppress the present Tumults, set on foot and fomented by Papists, Nonjurors, and other enemies to her majesty's title and government; and to issue her royal Proclamation, promising a reward to such as shall discover and seize those incendiaries, as have been the occasions of the late Tumults and Disorders.

No member in the least justified these tumults; and all professed a readiness to concur in an Address for the suppressing them; but desired the Address might be so framed, in such general words, that it might pass unanimously. They excepted to those words, "Set on foot and fomented by Papists, Nonjurors, and other enemies to her majesty's title and government;" because it did not appear, any Papists or Nonjurors were concerned in them, and there was no reason to believe they were; but if they would be particular, it was moved Republicans might be added; because it was certain, there were such persons; and as certain, that, by their principles, they would lay hold on any opportunity, and join with any people, to disturb the peace and quiet of the government; for they hoped to fish in troubled waters.

There was a debate upon adding that word; in which, a certain gentleman argued against it, 'because it was, not to be imagined, they would be for pulling down their own meeting-houses.' A plain concession, that the Dissenters were Republicans; for which his party blamed him.

The House divided upon the word Republicans, Yeas 114, Noes 279.

The same day, Mr. Secretary Boyle reported to the House, That he had attended her majesty with their Address: to which her majesty had been pleased to give this very gracious Answer:

"Her majesty is extremely sensible of the

great care and concern of the House of Commons for the public peace, upon this occasion; and as her majesty has a just resentment at these tumultuous and violent proceedings, so she will take immediate care for suppressing them; and will lose no time in endeavouring to find out the authors and abettors, in order to bring them to punishment: and to that purpose, will cause a Proclamation to be published, according to the desire of this House."

Resolved, *nem. con.* That the humble thanks of this House be returned to her majesty, for her most gracious Answer to their said Address.

Ordered, *nem. con.* That a Committee be appointed to draw up an Address upon the said Resolution.—And a Committee was appointed accordingly.—And they were ordered immediately to withdraw into the Speaker's Chamber, to draw up the said Address.

March 3.

Sr Thomas Parker reported the Address, which was as follows:

THE HUMBLE ADDRESS OF THE HOUSE OF COMMONS TO THE QUEEN.

"Most Gracious Sovereign,

"We your Majesty's most dutiful and loyal subjects, the Commons of Great-Britain, in parliament assembled, out of a deep sense of the repeated instances of your majesty's unparalleled goodness, beg leave to return our most hearty thanks for your most gracious Answer to our late humble Address, and for your effectual care in suppressing those rebellious Tumults, which were set on foot, and fomented by Papists, Nonjurors, and other enemies to your majesty's title and government, in defiance of the just prosecution of the Commons against Dr. Henry Sacheverell.

"And we most humbly beseech your majesty to believe, that as this prosecution proceeded only from the indispensable obligation which we, your faithful Commons, looked upon ourselves to lie under, not to sit still and patiently see the justice of the late happy Revolution, and the glory of our late Royal Deliverer reflected upon, your majesty's undoubted title struck at, your administration, by which so many blessings are derived upon us, endeavoured to be rendered odious to the people, and represented as destructive of the Church and Constitution, the present establishment and Protestant Succession undermined, the Resolutions of Parliament treated with contempt, the governors of the Church, and your majesty, as supreme, aspersed and vilified, the Toleration exposed as wicked, and sedition insolently invading the pulpit.

"So the maintenance of your majesty's right, the safety of your person, the quiet of your government, the continuance of our happiness under your excellent administration, the Succession in the Protestant line, the support and honour of the Church of England, as established by law, with that Toleration which is by act of parliament allowed to Protestant Dissenters, shall be our constant care and concern: and we will, upon all occasions, venture all that is dear to us, in defence of such inestimable blessings."

Great exceptions were taken to the Address; and it was moved, That it might be re-committed, because the committee had exceeded their commission, which was only to return her majesty thanks for her most gracious Answer; but they had taken upon them, in this Address, to state the whole matter of the Impeachment, and to give their opinions upon it; which was not only irregular, contrary to the orders of the House, but prejudging a case then depending before another judicature. And in the last paragraph there was a promise, to venture all that was dear to them, in defence of the Toleration, as well as of the Church of England. This was said to be putting both upon a level, upon an equal foot, which as many gentlemen could not think proper, and never intended, so it was not true; for though they should be always willing to maintain the Toleration, yet they would not venture so much for that, as for the Church of England. But all these exceptions were over-ruled; and though the Address was drawn up manifestly contrary to the rules and orders of the House, yet the majority agreed to it, as it was reported.

The Trial proceeded, and the Lords gave their Votes *seriatim*, Whether Dr. Henry Sacheverell was Guilty of High Crimes and Misdemeanours, charged upon him by the Impeachment of the House of Commons? And a majority voted him Guilty.

March 21.

Resolved, That the Thanks of this House be given to the members who were appointed the Managers of the Impeachment against Dr. Henry Sacheverell, for their faithful management, in the discharge of the trust reposed in them.

And Mr. Speaker gave them (they standing up in their places) the Thanks of the House accordingly.

There was no precedent pretended for this, besides the giving the thanks of the House to the attorney general, sir Heneage Finch, (afterwards lord chancellor, and earl of Nottingham,*) and the motion was farther supported

* "Another instance might have been found, and one more applicable to this case, viz. on Nov. 25, 1640, when Mr. Pym was thanked for his well-delivery of the charge against the earl of Strafford, [see his Case, vol. 3, p. 1382.]; and another on Jan. 6, 1640, where the House return Thanks to Mr. St. John, Mr. Whitlocke, lord Falkland and Mr. Hyde, 'for 'the great service they have performed, to the 'honour of this House, and good of the com-'monwealth, in the transferring the business of

by some encomiums on the Managers' performances. This matter was opposed by several gentlemen, who shewed a wide difference betwixt this case and that of my lord chancellor Nottingham, who had the Thanks of the House for maintaining their rights and privileges at a conference between the two Houses, in 1671, concerning the Commons' sole right of giving money; which was the more remarkable, because he was at first of opinion, that, in the particular point then in controversy, the Commons were in the wrong. But the House having determined against his opinion, and appointed him to be a Manager at the conferences, he applied himself to the searching the records; and with indefatigable labour and study, discovered such precedents, and so strenuously supported the Commons' right, that the Commons thought it proper to make him that honourable acknowledgment. It was also urged, that there were Managers upon former trials, that had not the Thanks of the House: and though these gentlemen might have done their best in the discharge of the service the House required from them, yet they deserved not such distinction. Many declared, the Managers did not speak their sense, and that they could not approve what they had advanced, particularly, in justifying Resistance, and declaring against Passive Obedience and Non-Resistance, which was the doctrine of the Gospel, and of the Church of England, and unalterably established by the Union of the two Kingdoms; and some of them denied the queen's hereditary right, affirming that she had only a parliamentary right; and that, as to the hereditary right, the Pretender had a much better title to the throne. That in these instances, they exceeded their commission, which could not be understood to allow them in any thing more, than speaking in defence of the Resistance at the Revolution, much less to meddle with the queen's title, which gave offence to many that heard them.

Another reason against giving them Thanks, was, because of their railing and reviling language to the Doctor, unbecoming any counsel in a criminal prosecution, and much unbecoming Managers of the House of Commons. In which it was hard to say, whether they shewed more bitterness or inconsistency.

And because of their giving up the honour of the House, in suffering of Mr. Dolben to explain himself, when the Lords required it: in which case, he should not have complied, without consulting the House, and taking their directions.

And one gentleman spoke to this effect, just before the question; That though he was against giving them the Thanks of the House, yet he could not forbear mentioning one reason for it, that had been omitted by others, but was, in his opinion, stronger than any they offered; and that was, because he was sure they would have thanks no where else.

There was a division of the House, the Yeas were 175, Noes 116; and it was observable, that in this question, all the Managers present in the House (except Mr. Dolben, whose singular modesty was the more remarkable) voted for their having thanks.

March 22.

A Message from the Lords by Mr. Rogers and Mr. Hiccocks, That the Lords had commanded them to acquaint this House, that their Lordships are now ready to give Judgment against Dr. Henry Sacheverell, if this House, with their Speaker, will come and demand the same.

Resolved, That this House will demand Judgment of the Lords against Dr. Henry Sacheverell.

Some gentlemen spoke against demanding Judgment, laying down these positions: That the Lords could not give Judgment, unless the Commons demanded it: and that the Commons were at liberty, whether they would demand it or not, according to the reason given by the Commons, when they insisted to be present at the Trial of the earl of Strafford, as a committee of the whole House, That they held it fit and necessary, that all the members should be present at the Trial, to the end, every one might satisfy his own conscience, in the giving his vote to demand Judgment: and when that Trial was over, no Judgment was demanded. In the present case, they were against demanding Judgment, because of the precedent of this proceeding, which might be very dangerous to innocent men hereafter; for none could be safe, if mere innuendos, the most forced and strained constructions, and passages misapplied, should be admitted for evidence. They thought the Lords had made dangerous precedents, in taking upon them to declare the law and usage of parliament, without one precedent for it, and directly contrary to many; for the case of Dr. Manwaring could not be a precedent, he submitting, and pleading guilty. The Lords also put the question of Guilty upon all the Articles together, which is such a complicated question, they could not give their votes freely; and it was said to be a reason, why some of them did not vote: and the Lords, who are both jury and judges, were not under the obligation of an oath, or upon their honour. To these reasons, one other was added, That it would be a great reflection on this parliament,

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' Ship-money, [see the Case, vol. 3, p. 826.] ' and the other matters concerning the liberty ' and property of the subject, and the articles ' against the lord keeper Finch,' [see his Case, volume 4, p. 1.] See, also, in Grey's Debates, vol. 3, p. 283, the Thanks of the House given by the Speaker, on the 8th of June, 1675, to sir John Robinson, a member for the city of London and lieutenant of the Tower, ' for hav- ' ing, like a worthy person and trusty com- ' moner, done his duty in obeying the orders of ' the House.' " 4 Hatsell's Precedents, 292, note. See the more recent cases of impeachments.

to have, in the same session, one of the ministers of the Church of England suffered to lie in prison without relief, upon his complaint, for reading her prayers; and to have another punished for preaching her doctrines.

These arguments were urged against demanding Judgment, by those gentlemen that opposed the prosecution in every step of it; but some of those that had been forward in it, were now against demanding Judgment, out of great displeasure and indignation at the Judgment they heard was to be given; which they called a scandalous, ridiculous Judgment, and a reflection upon the proceeding; and therefore they were against demanding Judgment. And it is said, several of those gentlemen withdrew, and would not vote in this question. The House divided upon it; the Yeas were 165, Noes 117.

March 23.

Then the Commons, with their Speaker, went up to the bar of the House of Lords, and, by their Speaker, demanded Judgment against Dr. Henry Sacheverell: and being returned, Mr. Speaker reported, that he had, in the name of the knights, citizens, and burgesses, in parliament assembled, and of all the Commons of Great-Britain, demanded Judgment of the Lords against Dr. Henry Sacheverell, for High Crimes and Misdemeanors, for which he was impeached.

The Judgment was, 'That Henry Sacheverell, Doctor in Divinity, shall be, and is 'hereby enjoined not to preach during the 'term of three years next ensuing. That 'Dr. Henry Sacheverell's two printed Sermons, referred to by the Impeachment of the 'House of Commons, shall be burnt before 'the Royal-Exchange, in London, between 'the hours of one and two of the clock, on the '27th of this instant March, by the hands of 'the common hangman, in the presence of 'the lord-mayor, and the two sheriffs of London and Middlesex.'

A List of the Lords, who protested against some Proceedings, in relation to the Case of Dr. Henry Sacheverell, in the House of Peers; with their Lordships' Reasons for entering their Protestations.

Die Martis, 14 Martii, 1709.

The question was put, That by the law and usage of Parliament in prosecutions, by Impeachments for High Crimes and Misdemeanors, by writing or speaking, the particular words supposed to be criminal are not necessary to be expressly specified in such impeachments.*

It was resolved in the affirmative.

Dissentient, Buckingham, Jo. Ebor, H. London, Hamilton, Berkeley, Stratton, Northesk, Dartmouth, Tho. Roffen. Geo. Bath and Wells, Mar, Haversham,

1. Because we conceive the law of the land is as much the rule of judicature in Parliament, as it is in the inferior courts of justice; and since, by the opinion of all the judges in all prosecutions, by information, or indictment, for writing or speaking, the particular words supposed to be criminal must be expressly specified in such information or indictment; and that this is the law of the land, confirmed by constant practice; we conceive that there is the same reason and justice for specifying in impeachments, the particular words supposed to be criminal; for otherwise, a person who is innocent and safe by the law, out of Parliament, may, nevertheless, be condemned in Parliament: for we conceive, that some reasons of law and justice, why the words supposed criminal must be specified in informations and indictments, may be, that the party accused may certainly know his charge, and be thereby enabled to defend his innocence; that the jury may know it too, and be enabled thereby the better to apply the evidence given by the witnesses to the matter of such charge; and that the judges themselves may the better judge of the nature of the crime, and of a punishment adequate to it, which, in cases of misdemeanor, which are indefinite and innumerable, must extremely vary, according to the heinousness of the offence; and finally, that the House of Lords, upon complaint to them, may also judge whether the fine, which is usually one of the punishments for misdemeanors, does not exceed the demerit, especially since by the Bill of Rights, exorbitant fines are declared to be illegal; which reasons seem to be fully as strong in the case of impeachments, as in indictments and informations; for the particular words are as necessary to enable the Lords to determine uprightly, and impartially, as the jury or judges, and as necessary for the defence of the accused here, as in the courts below; and if there was to be a difference, it seems more necessary in this high court; for the weightier the prosecution is, the more need has an unfortunate man of indulgence, and all lawful favour; and surely, there cannot be a heavier load upon any man, than an accusation of all the Commons of Great-Britain.

2. We do not remember any precedent insisted on for the maintenance of this resolution, save only the Case of Dr. Manwaring, which we conceive could not warrant this resolution. For, 1. The words charged upon him by the Commons' Declaration, were not compared with the Sermons, though it was desired; and consequently, no lord could say, they were not the words of the Sermon; and therefore, upon such uncertainty, we conceive,

* On the 11th of March the Lords resolve, "That they will proceed to the determination of the Impeachment according to the law of the land, and the law and usage of Parliament;" and direct the clerks. On the 13th they appoint a committee, to search precedents upon this subject, and on the 14th the report was made.

we could not ground a positive resolution. 2. The Charge upon him, taken out of his Sermon, on the 4th of May, 1628, seems to be the very words by him spoke; for they were attested by ear witnesses, who surely never were, or could be admitted to attest their own conjectures of the scope of a Sermon, and not specify the very words, for that would be to make the witnesses to be the judges.

3. Besides, in such a case as this, where the party did not insist on any legal and just exceptions, of which he might have taken advantage, if he had made his defence, which he did not, but submitted and begged pardon; this ought not to be looked upon as a precedent, or authority, to justify the illegality of the form of that impeachment.

3. But although this precedent was full and express to the point resolved, we humbly conceive, that one precedent is not sufficient to support a law and custom of parliament; nor consequently, a resolution declaring it; for surely there is a great difference between a single instance, and a law and custom; especially,

4. Since we conceive, that in all the precedents, at least all that have appeared to us, for four hundred years, of the prosecutions in parliament, the particular words charged as criminal, have been constantly expressed in the Articles, or Declarations of Impeachment.

Exilium Hugonis le de Spencer Patris et Filii. (Ed. 2.) The 1st Article was for making a Bill in writing, the tenor whereof was particularly set forth.

William de la Pool, (26 H. 8) 6 *Art.* was for words spoken by him, sitting in the council in the Star-Chamber, viz. That he said, he had a place in the council-house of the French king, as he had here; and was as well trusted as he was here, and could remove from the French king the privyest man of his council, if he would.

Lord *Finch.* The opinions he delivered are set forth in *hæc verba,* as also the times when he delivered them. (1640. *Art.* 4, 5.)

Another opinion delivered by him in the Exchequer-Chamber, and western circuit, is set down in his express words. (*Art.* 7.)

Dr. *Cosens.* He is charged with words, delivered in a Sermon at Durham. The words were these, the reformers, &c. (1640. *Art.* 11.)

Charges him with words in like manner. The words were these, The King, &c. (*Art.* 19.)

Judge *Berkley.* The words charged upon him are expressly mentioned. (1641. *Art.* 1.)

That he subscribed an opinion, *in hæc verba.* (*Art.* 4.)

Which are specified. (*Art.* 5.)

The matter therein charged, though of record, was copied and delivered with the Articles. (*Art.* 6.)

The words spoken, and the place, expressly set forth. (*Art.* 7, 8.)

Judge *Crawley.* For subscribing and giving opinions, set forth in *hæc verba.* (1641. *Art.* 1, 2, 3.)

Herbert. For exhibiting Articles against the Five Members; (1641,) which Articles follow, in these words, &c.

Thirteen Bishops impeached (1641.) for making and promulging, in 1640, several Constitutions and Canons, contrary to the king's prerogative, &c.

They demurred, because the charge was general; but receded from this demur, because it appeared to be particular.

Earl *Strafford.* (1641. *Art.* 2.) Expresses the words spoken by him, and the time.

(*Art.* 4, 20, 21, 22.) Express the very words spoken by him.

(*Art.* 23, 24, 25, 26, 27.) Is in like manner, with an innuendo of his meaning.

Archbishop *Laud.* (1642.) Express the words spoken by him.

(*Art.* 1, 4, 10, 2.) Expresses the words spoken by him, and the time and place.

So necessary did the Long Parliament itself think it to pursue the forms of law in all their prosecutions.*

Upon the whole, therefore, we conceive, that so great a number of precedents is sufficient to out-weigh the single instance of Dr. Manwaring's case, how apposite soever it might seem to be to the present case, which, for the reasons which we have mentioned, is far from being plain and clear, or having the full authority of a precedent: and the law and custom of parliament, as we conceive, is to be determined by constant course and practice, and not one precedent, occasioned by such odious doctrines as those of Dr. Manwaring's: nor can the contrary assertion to the abovesaid resolution be of any ill consequence to impeachments by the Commons; because it is easy for them to specify the words which offend them, but extremely difficult for the accused to defend himself, without knowing them: and as all who are charged criminally have leave to make their defence, so they should also have allowed them all lawful means for it.

Jo. Ebor, Scarsdale, Anglesey, Abingdon, Weymouth, Conway, Willoughby, Br. Guilford, H. London, Leeds, Sussex, Nottingham, N. Duresme, Rochester, Scarborough, W. Cestriens. Osborne, Guernsey, Lempster, Thanet, Denbigh, Plymouth, Northampton, North and Grey, Craven, R. Ferrers, Beaufort, Yarmouth, Berkshire, Jersey, Stawell, Howard.

Die Jovis, 16 Martii, 1709.

The order of the 14th instant being read, for taking into consideration the Impeachment of Dr. Henry Sacheverell, Article by Article: and it being moved to declare, that the Commons had made good the first Article against Dr. Henry Sacheverell; after a long debate thereupon, this question was proposed; That the Commons have made good their first Article of Impeachment against Henry Sacheverell, Doc-

* See these Cases in this Collection.

ter in Divinity. And a further debate thereupon, This question was put; Whether this question shall be now put? It was resolved in the affirmative.

Dissentient,

Because we humbly conceive, there are no reflections therein contained on the memory of the late king William, nor the Revolution; and that there is no offence charged therein upon Dr. Sacheverell, against any known law of the land. — Jo. Ebor, Wemys, Suffolk, Shrewsbury, Poulett, Beaufort, Denbigh, Stawell, Yarmouth, R. Ferrers, N. Duresme, Scarsdale, Howard, Berkley, Str., Say and Sele, W. Cestriens. Willoughby, Br., Ormond, Anglesea, Rochester, Buckingham, Craven, Weymouth, Sussex, Lexington, Osborne, Northesk, Tho. Roffen., Northampton, Mar, Leigh, Weston, Chandos, Guernsey, Hamilton, Berkshire, Thanet, Scarborough, Nottingham, North and Grey, Conway, Leominster, Abingdon, Geo. Bath and Wells, Plymouth, Guilford, H. London, Dartmouth, Haversham, Leeds.

Then the main question was put; That the Commons have made good their first Article of Impeachment against Henry Sacheverell, Doctor in Divinity. It was resolved in the affirmative.

Dissentient, — Buckingham, Shrewsbury, Dartmouth, Guilford, N. Duresme, Willoughby, Br., Haversham, Northesk, Mar.

Because by the laws of the land, the laws of parliament, and the inherent right of peerage, every peer is to judge for himself, both of the fact, as well as of the law, and cannot be precluded by any majority; which indeed must determine the case in respect of the criminal; but never did nor can preclude any lord from voting the party accused Guilty or Not Guilty of the fact, as well as of the crime of such fact. — Sussex, Northampton, Yarmouth, Scarborough, W. Cestriens. North and Grey, Thanet, Denbigh, Weymouth, Stawell, Conway, Howard, Geo. Bath and Wells, Guernsey, Craven, Leeds, Beaufort, Scarsdale, Rochester, Jersey, R. Ferrers, Plymouth, Osborne, Leigh, Abingdon, Ashburnham.

To the questions upon the second, third, and fourth Articles, we dissent, for the same reason as is given against the question upon the first. — Buckingham, Berksbire, Nottingham, Rochester, Weymouth, Howard, H. London, Haversham, Ormond, Willoughby, Br., Guernsey, Jo. Ebor, N. Duresme, Hamilton, Sussex, Scarsdale, Stawell, Poulett, Abingdon, Conway, Osborne, Weston, Guilford, Lexington, W. Cestriens. Geo. Bath and Wells, Beaufort, Denbigh, Yarmouth, Jersey, Thanet, Plymouth, Northampton, Leigh, Anglesea, Craven, Dartmouth, Tho. Roffen.

Die Sabbati, 18 Martii, 1710.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the question to be put to each lord in Westminster-hall shall be, Is Henry Sacheverell, Doctor in Divinity, guilty of High Crimes and Misdemeanors, charged on him by the Impeachment of the House of Commons? And the Answer thereunto shall be, Guilty, or Not Guilty, only.

Dissentient, — Buckingham, Hamilton, Mar, Lexington, Dartmouth, Northesk, Jo. Ebor, W. Cestriens. Tho. Roffen, N. Duresme, Shrewsbury.

1. Because we do humbly conceive, that the obliging every lord to answer generally, Guilty, or Not Guilty, to a question containing all the Articles of this Impeachment, is a kind of tacking upon ourselves,* by an unnecessary joining of matters of a different nature, and subjecting them to one and the same determination; and consequently may prejudice the right every peer has to give a free affirmative, or negative; since whoever thinks Dr. Sacheverell guilty of one part, and innocent of the other, will be obliged either to approve what he condemns, or condemn what he approves.

2. We do humbly conceive, there is at least a possibility, that though a majority of the House, if admitted to vote to the Articles separately, may think him innocent upon each Article; yet, by this method of a general Answer, he may be condemned of all; which seems not to be consistent with the usual method of justice in this House.

3. We do humbly conceive, that since the Judgment of the House in this case ought to be a declaration of the law, the condition of the people will be most miserable, to have punishment inflicted for High Crimes and Misdemeanors, and not to have a possibility of informing themselves what the High Crimes and Misdemeanors thereby punished are; for the people's only guide is the law; and they can never be guided by what they can never be informed of: And we do humbly conceive, that this uncertainty being in the case of a clergyman, for preaching, it may possibly create some fear in good men, when they preach some doctrines of the Church of England, particularly that of Non-resistance; and may be made use of by ill ones, as an excuse for the neglect of that duty, which, upon some occasions, is required of them, even by the laws of the land. — Ormond, Scarsdale, Denbigh, Leeds, Nottingham, Stawell, Weymouth, Craven, Osborne, Willoughby, Br., Haversham, Geo. Bath and Wells, Beaufort, Anglesea, Northampton, Leo-

* This I suppose was designed as a sneer upon the opposition which the Lords of what was called the Low Church Party, had in the case of the Bill against Occasional Conformity, made to the practice of tacking.

minster, H. London, R. Ferrers, Poulett, Howard, Plymouth, Guilford, Leigh, Berkshire, Thanet, Yarmouth, Rochester, Sussex, North and Grey, Abingdon, Jersey, Conway, Weston, Guernsey.

Die Lunæ, 20 Martii, 1710.

The House, pursuant to the orders of Saturday last, adjourned into Westminster-hall.—And being there, the House was resumed, and the Lord Chancellor declared, That the Lords had agreed upon a question to be put to each lord severally.

Then his lordship put the question, beginning at the junior baron first, as follows: Is Dr. Henry Sacheverell guilty of High Crimes, and Misdemeanors, charged upon him by the Impeachment of the House of Commons?

And having asked every lord present, and they having declared, Guilty, or, Not Guilty, his lordship having cast up the Votes, declared him Guilty.

Dissentient, Sussex, Thanet, Nottingham, Craven, Northesk, North and Grey, Leigh, Jersey, Hamilton, Beaufort, Weston, Ormond, Berkshire, N. Duresme, Shrewsbury, Scarborough, Leeds, Yarmouth, Jo. Ebor, Leominster, Northampton, Willoughby, Br., Abingdon, Poulett, H. London, Guernsey, Geo. Bath and Wells, Say and Sele, Osborne, Plymouth, Chandos, W. Cestriens. Buckingham, Rochester, Mar, Weymouth, Guilford, Conway, Anglesea, Scarsdale, Dartmouth, Denbigh, Howard, Tho. Roffen, Berkeley, Str., Stawell, Lexington.

Die Martis, 21 Martii, 1710.

Ordered, That the Judgment to be passed in the Case of Dr. Henry Sacheverell shall be, That he be enjoined not to preach during the term of three years next ensuing: That his two printed Sermons, referred to by the Impeachment of the House of Commons, shall be burnt before the Royal Exchange in London, between the hours of and , on the day of , by the hands of the common hangman, in the presence of the lord mayor, and the two sheriffs of London and Middlesex.

Dissentient, Jo. Ebor, Scarsdale, Northampton, Craven, Howard, North and Grey, Scarborough, N. Duresme, Weymouth, Geo. Bath and Wells, Guilford, Buckingham, Berkshire, Abingdon, Conway, Yarmouth, H. London, Plymouth, Tho. Roffen, Guernsey, Leominster, Denbigh, Nottingham, Thanet, Osborne, Beaufort, Anglesea, Sussex, R. Ferrers, Leigh, Poulett, Ashburnham.

THE TRIAL.

First Day.—*February 27.*

ABOUT eleven of the clock the Lords came from their own House into the Court erected in Westminster-hall, for the Trial of Henry Sacheverell, Doctor of Divinity, in the manner following:

The Lord Chancellor's gentlemen-attendants, two and two.—The Clerks of the House of Lords, with the two Clerks of the Crown in the Courts of Chancery and King's Bench.—The Masters in Chancery, two and two.—Then the Judges.—The Peers eldest Sons, and Peers Minors, two and two.—The yeoman-usher of the House.—The gentleman-usher of the black rod.—Then the Peers two and two, beginning with the youngest barons.—The Serjeant at Arms, with his mace.—Then one of the heralds.—Then the Lord Chancellor alone.

The Lords being seated in the place for that purpose prepared in Westminster-hall, and the Commons in a committee of the whole House being in the seats prepared for them, and the Managers for the House being at their lordships' bar, the serjeant at arms made proclamations as follow:

Serjeant at Arms. O yes! Our sovereign lady the queen doth strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

Serjeant at Arms. O yes! Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy bail, or thou forfeitest thy recognizance.

Then Dr. Henry Sacheverell came to the bar and kneeled; his Counsel, viz. sir Simon Harcourt, Mr. Dodd, Mr. Phipps, Mr. Doe, and Dr. Henchman, standing near him at the bar; and rising again by direction of the Lord Chancellor, the serjeant at arms again made proclamation as follows:

Serjeant at Arms. O yes! Whereas a Charge of High Crimes and Misdemeanors has been exhibited by the House of Commons, in the name of themselves and all the Commons of Great Britain, against Henry Sacheverell, Doctor in Divinity; all persons concerned are to take notice that he now stands upon his Trial, and they may come forth, in order to make good the said Charge.

Lord Chancellor. (Lord Cowper.) Dr. Sacheverell, it is needless to give you any directions concerning your behaviour during the time of your Trial, or the ordering your Defence, because the Lords have not only allowed but assigned you the Counsel you desired, some both of the civil and common law, who will be able to direct and advise you, not only in the substance, but form of your Defence. The Lords have also made an Order for summoning all such Witnesses as you have propounded to appear for you. And that you might be the better able to provide for your Defence, you have had your liberty on the first application for it, and giving security for your appearance;

you have also had all the time you thought fit to desire, in order to prepare for your Defence: so that you ought ever to remember, that their lordships have used towards you all the indulgence you could reasonably expect.

Then the Clerk, by direction of the Lord Chancellor, read the Articles of Impeachment, Doctor Sacheverell's Answer, and the Replication of the House of Commons, as follows:

ARTICLES

EXHIBITED BY THE KNIGHTS, CITIZENS, AND BURGESSES, IN PARLIAMENT ASSEMBLED, IN THE NAME OF THEMSELVES AND OF ALL THE COMMONS OF GREAT BRITAIN, AGAINST HENRY SACHEVERELL, DOCTOR IN DIVINITY, IN MAINTENANCE OF THEIR IMPEACHMENT AGAINST HIM FOR HIGH CRIMES AND MISDEMEANORS.

Whereas his late majesty king William the third, then Prince of Orange, did with an armed force undertake a glorious enterprize for delivering this kingdom from popery and arbitrary power; and divers subjects of this realm, well affected to their country, joined with, and assisted his late majesty in the said enterprize: and it having pleased Almighty God to crown the same with success, the late happy Revolution did take effect, and was established. And whereas the said glorious enterprize is approved by several acts of parliament, and amongst others, by an act made in the first year of the reign of king William and queen Mary, intituled, 'An Act, declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown:' And also, by one other act made in the same year, intituled, 'An Act for preventing vexatious Suits against such as acted in order to the bringing in their Majesties, or for their service;' and also by one other act made in the same year, intituled, 'An Act for appropriating certain Duties for paying the States-General of the United Provinces their Charges for his Majesty's Expedition into this Kingdom, and for other uses: and the actings of the said well-affected subjects, in aid and pursuance of the said enterprize,' are also declared to have been necessary, and that the same ought to be justified. And whereas the happy and blessed consequences of the said Revolution are, the enjoyment of the light of God's true religion established among us, and of the laws and liberties of the kingdom; the uniting her majesty's Protestant subjects in interest and affection, by legal indulgence or toleration granted to Dissenters; the preservation of her majesty's sacred person; the many and continual benefits arising from her majesty's wise and glorious administration, and the prospect of happiness for future ages, by the settlement of the Succession of the Crown in the Protestant line, and the Union of the two Kingdoms. And whereas the Lords Spiritual and Temporal, and Commons in Parliament assembled, did, by their Address of the 17th of December, in the year of our Lord 1705, lay before her majesty the following Vote or Resolution, viz. "That the Church of England, as by law established, which was rescued from the extremest danger by king William the third of glorious memory, is now, by God's blessing, under the happy reign of her majesty, in a most safe and flourishing condition; and that whoever goes about to suggest or insinuate that the Church is in Danger under her majesty's administration, is an enemy to the queen, the Church, and the kingdom:" And by their said Address did humbly beseech her majesty to take effectual measures for making the said Vote or Resolution public, and also for punishing the authors and spreaders of such seditious and scandalous reports; and on the 20th day of the said December, her majesty was pleased to issue her royal Proclamation accordingly. Yet, nevertheless, the said Henry Sacheverell preached a Sermon at the assizes held at Derby, August the 15th, in the year of our Lord 1709, and afterwards published the same in print, with a Dedication thereof; and the said Henry Sacheverell also preached a Sermon at the cathedral church of St. Paul, before the lord mayor, aldermen, and citizens of London, on the 5th day of November last, being the anniversary thanksgiving to Almighty God for the deliverance from the Gunpowder-Treason, and for beginning the late happy Relution, by giving his late majesty a safe arrival here, and for completing the same, by making all opposition fall before him, till he became our king and governor; which said Sermon he the said Henry Sacheverell likewise published in print, with a Dedication thereof to sir Samuel Gerrard, baronet, lord mayor of the city of London; and with a wicked, malicious, and seditious intention to undermine and subvert her majesty's government and the Protestant Succession as by law established; to defame her majesty's administration; to asperse the memory of his late majesty; to traduce and condemn the late happy Revolution; to contradict and arraign the resolutions of both Houses of Parliament; to create jealousies and divisions amongst her majesty's subjects; and to incite them to sedition and rebellion.

ARTICLE I.

He, the said Henry Sacheverell, in his said Sermon preached at St. Paul's, doth suggest and maintain, That the necessary means used to bring about the said happy Revolution, were odious and unjustifiable: That his late majesty, in his Declaration, disclaimed the least imputation of Resistance: And that to impute Resistance to the said Revolution, is to cast black and odious colours upon his late majesty and the said Revolution.

ARTICLE II.

He, the said Henry Sacheverell, in his said Sermon preached at St. Paul's, doth suggest and maintain, That the foresaid Toleration

granted by law is unreasonable, and the allowance of it unwarrantable: And asserts, That he is a false brother with relation to God; religion, or the Church, who defends Toleration and Liberty of Conscience: That queen Elizabeth was deluded by archbishop Grindall, whom he scurrilously calls a False Son of the Church, and a Perfidious Prelate, to the toleration of the Genevian discipline: And that it is the duty of superior pastors to thunder out their ecclesiastical anathemas against persons intitled to the benefit of the said Toleration; and insolently dares, or defies any power on earth to reverse such sentences.

ARTICLE III.

He, the said Henry Sacheverell, in his said Sermon preached at St. Paul's, doth falsly and seditiously suggest and assert, That the Church of England is in a condition of great peril and adversity under her majesty's administration; and in order to arraign and blacken the said Vote or Resolution of both Houses of Parliament, approved by her majesty as aforesaid, he, in opposition thereto, doth suggest the Church to be in Danger; and, as a parallel, mentions a vote, That the person of king Charles the first was voted to be out of danger, at the same time that his murderers were conspiring his death; thereby wickedly and malicously insinuating, that the members of both Houses, who passed the said vote, were then conspiring the ruin of the Church.

ARTICLE IV.

He, the said Henry Sacheverell, in his said Sermons and Books, doth falsly and maliciously suggest, That her majesty's administration, both in ecclesiastical and civil affairs, tends to the destruction of the constitution: And that there are men of characters and stations in Church and state who are False Brethren, and do themselves weaken, undermine and betray, and do encourage, and put it in the power of others, who are professed enemies, to overturn and destroy the constitution and establishment; and chargeth her majesty, and those in authority under her, both in Church and state, with a general mal-administration: And, as a public incendiary, he persuades her majesty's subjects to keep up a distinction of factions and parties; instils groundless jealousies, foments destructive divisions among them, and excites and stirs them up to arms and violence: And that his said malicious and seditious suggestions may make the stronger impression upon the minds of her majesty's subjects, he the said Henry Sacheverell doth wickedly wrest and pervert divers texts and passages of Holy Scripture.

All which Crimes and Misdemeanors the Commons are ready to prove, not only by the general scope of the same Sermons or Books, but likewise by several clauses, sentences and expressions in the said Sermons or Books contained; and that he the said Henry Sacheverell, by preaching the Sermons, and publishing the Books aforesaid, did abuse his holy function, and hath most grievously offended against the peace of her majesty, her crown and dignity, the rights and liberties of the subject, the laws and statutes of this kingdom, and the prosperity and good government of the same. And the said Commons, by protestation, saving to themselves the liberty of exhibiting at any time hereafter any other Article or Impeachment against the said Henry Sacheverell; and also of replying to his Answers, or any of them, and of offering proofs of all the premisses, or any of them, and of any other Article or Impeachment that shall be exhibited by them, as the case, according to course of parliament, shall require, do pray that the said Henry Sacheverell be put to answer to all and every the premisses; and that such proceeding, examination, trial, judgment, and exemplary punishment, may be thereupon had and executed, as is agreeable to law and justice.

THE ANSWER

OF HENRY SACHEVERELL, DOCTOR IN DIVINITY, TO THE ARTICLES EXHIBITED BY THE KNIGHTS, CITIZENS, AND BURGESSES IN PARLIAMENT ASSEMBLED, IN THE NAME OF THEMSELVES, AND OF ALL THE COMMONS OF GREAT BRITAIN, IN MAINTENANCE OF THEIR IMPEACHMENT AGAINST HIM FOR HIGH CRIMES AND MISDEMEANORS.

The said Henry Sacheverell, saving to himself all advantages of exception to the said articles for the generality, uncertainty, and insufficiency thereof, and of not being prejudiced by any words or want of form in this his Answer, admits, that at the request of George Sacheverell, esq. high sheriff of the county of Derby, he preached a Sermon at the assizes held for that county, on the 15th day of August 1709; and that at the desire of the right hon. sir Samuel Gerrard, baronet, lord mayor of the city of London, he also preached a Sermon at the cathedral church of St. Paul, before the said lord mayor, and the aldermen and citizens of London, on the 5th day of November last; and that he caused the said Sermons to be printed: But denies that he preached, or caused the same to be printed or published with any such wicked, malicious, or seditious intent, as in the preamble of the said Articles is affirmed; the said Henry Sacheverell having been induced to print the Sermon he preached at Derby, at the request of the gentlemen of the grand jury for that county, to whom he humbly presumed to dedicate the same, as the most public acknowledgment he was capable of making, for the peculiar honour he had received by their public approbation of that Sermon. And the said lord mayor having been pleased to express his good liking of the said Sermon preached at St. Paul's, the said Henry Sacheverell, at his request, caused

the same to be printed, with a Dedication thereof to him. And for Answer to the said Articles, humbly saith,

ANSWER TO FIRST ARTICLE.

To the first part of the First Article, the said Henry Sacheverell denies, that, in his said Sermon preached at St. Paul's, "he doth suggest and maintain, that the necessary means used to bring about the happy Revolution were odious and unjustifiable." Nor doth he in any part of that Sermon affirm any thing concerning the necessary means used to bring about the happy Revolution. The said Henry Sacheverell is so far from reflecting on his late majesty, or the happy Revolution, that he endeavours, in that Sermon, to clear the Revolution, and his late majesty, from the black and odious colours which their greatest enemies has endeavoured to cast upon both.

And as to that part of the said Article, whereby the said Henry Sacheverell is charged with "suggesting and maintaining, that his late majesty, in his Declaration, disclaimed the least imputation of Resistance;" the said Henry Sacheverell doth acknowledge himself to have made such suggestion; and declares, that he made it not in dishonour, but in vindication of his said majesty. The Resistance the said Henry Sacheverell represents the late king to have disclaimed, being such a Resistance as tended to the conquest of this realm, as plainly appears from that part of his late majesty's Declaration which is referred to, and *verbatim* set forth at the bottom of the same page, in which he mentions his late majesty's disclaiming any such imputation.

Whether the said Henry Sacheverell was mistaken or not, in expressing himself, as if the late king had disclaimed any imputation of Resistance, when he the said Henry Sacheverell meant thereby, that the late king disclaimed the imputation of a design of conquest, he humbly conceives, such a suggestion by him, plainly designed for the honour of the late king, cannot in any reasonable construction be thought a reflection on his said majesty, or deemed any Crime or Misdemeanor.

For the further justification of what the said Henry Sacheverell said in reference to his late majesty's having disclaimed any the least imputation of Resistance, the said Henry Sacheverell humbly observes, that in his late majesty's Declaration, the following passages are contained: "We have thought fit to go over to England, and carry over with us a force sufficient, by the blessing of God, to defend ourselves from the violence of evil counsellors.—We think fit to declare, that this our expedition is intended for no other design, but to have a free and lawful parliament assembled."

As to the last charge in the said Article, the said Henry Sacheverell denies, "That he doth in his said Sermon suggest and maintain, that to impute Resistance to the said Revolution, is to cast black and odious colours upon his late majesty and the said Revolution." The persons whom the said Henry Sacheverell in his Sermon describes, as casting black and odious colours upon his late majesty and the Revolution, are not those who impute Resistance to the late Revolution, of whom the said Henry Sacheverell affirms nothing, "but those new preachers and new politicians, who teach, in contradiction to both gospel and the laws, that the people have the power vested in them, the fountain and original of it, to cancel their allegiance at their pleasure, and to call their sovereign to account for high-treason against his subjects; nay, and to dethrone and murder him for a criminal, as they did the Royal Martyr by a justiciary sentence; who are maintainers of anti-monarchial schemes, and of such damnable positions as are, by the laws of church and state, condemned for rebellion and high-treason; and who urge the Revolution in defence of such principles." Unless, therefore, those who impute Resistance to the Revolution, be the same with those new preachers and new politicians above specified, the said Henry Sacheverell affirms nothing concerning them.

The said Henry Sacheverell, upon the strictest search into his said Sermon preached at St. Paul's, doth not find that he hath given any the least colourable pretence for the accusation exhibited against him in this first Article, but barely by his asserting the utter illegality of Resistance to the supreme power upon any pretence whatsoever; for which assertion he humbly conceives he hath the authority of the Church of England, which in divers passages of her Homilies, too large and too numerous to be here specified, but by the said Henry Sacheverell ready to be produced, hath taught and inculcated this doctrine, as founded on the Word of God; particularly in the second part of the Sermon of Obedience, contained in the former Book of Homilies, set forth in the time of king Edward the 6th, where are these words: "Here, good people, let us all mark diligently: It is not lawful for inferiors and subjects in any case to resist and stand against the superior powers; for St. Paul's words be plain, That whosoever withstandeth, shall get to themselves damnation; for whosoever withstandeth, withstandeth the ordinance of God."

Which said Book of Homilies is affirmed in one of the Thirty-Nine Articles of Religion, which concern the Confession of the true Christian Faith, to contain a godly and wholesome doctrine, and is ordered to be read in churches, by the ministers, diligently and distinctly, that they may be understanded of the people. And the said Henry Sacheverell, in further maintenance of the said doctrine and position, contained in the Book of Homilies, and of the authority of those books, saith, That by an act of parliament made in the 13th year of the reign of queen Elizabeth, intituled, "An Act for the Ministers of the Church to be of sound Religion," it is enacted, That no person should thereafter be admitted to any bene-

fice with cure, except he should first have subscribed the said Articles in the presence of the ordinary, and publicly read the same in the parish church of that benefice, with declaration of his unfeigned assent to the same. And that by an Act made in the 5th year of her present majesty's reign, intituled, "An Act for securing the Church of England as by Law established," it was enacted, That the said Act, made in the said 13th year of the reign of queen Elizabeth, should remain and be in full force for ever; and be inserted in express terms in any Act which should be made for ratifying the Union of the two kingdoms of England and Scotland; and therein declared to be an essential and fundamental part thereof. And the said Act was accordingly inserted in express terms, in an Act for the Union of the two Kingdoms; and thereby ratified and declared to be an essential and fundamental part thereof.

And the said Henry Sacheverell doth further humbly insist, and is advised, that the aforesaid assertion is agreeable to, and warranted by, the common law of England, and divers acts of parliament now remaining in full force.

The said Henry Sacheverell doth with all humility aver the illegality of Resistance, on any pretence whatsoever, to be the doctrine of the Church of England, and to have been the general opinion of our most orthodox and able divines, from the time of the Reformation to this day: this doctrine hath, in the most solemn manner, been taught in that University, whereof he hath been for more than 20 years a member; this hath been often, with public approbation of each House of Parliament, preached and printed; and in terms of greater force than any used by the said Henry Sacheverell, hath by the right reverend Fathers of our Church, dead and living, been avowed and maintained.

And the said Henry Sacheverell was the rather induced to preach against the doctrine of Resistance of the supreme power upon the 5th day of November, because on that day the Church commemorates our deliverance from the traitorous attempts of rebellious Papists, and because the lawfulness of resisting the supreme power was originally a Popish doctrine; for which reasons, as he humbly conceives, the Rubric of the Office appointed for that day, by her late majesty queen Mary (of blessed memory) directs, That after the Creed, if there be no Sermon, shall be read one of the six Homilies against Rebellion.

Whilst, therefore, the Church of England, as by law established, is in a safe and flourishing condition under her majesty's happy administration, whilst Popish tenets are by all good Protestants condemned and abhorred, whilst the laws of this realm continue in their full force and vigour, the said Henry Sacheverell humbly hopes, that a dutiful son of that Church, a sincere Protestant, and a faithful subject of her majesty, shall not suffer for asserting the doctrine of Non-Resistance of the supreme powers. But if this doctrine be declared erroneous, and it should please God that he should suffer for asserting it, he trusts that God will enable him to shew his steady belief of this doctrine, by a meek and patient resignation to whatever shall befal him on that account.

ANSWER TO THE SECOND ARTICLE.

To that part of the Second Article which charges, that he the said Henry Sacheverell doth suggest and maintain, "That the Toleration granted by law is unreasonable, and the allowance of it unwarrantable;" the said Henry Sacheverell saith, That, upon the most diligent enquiry, he hath not been able to inform himself, that a Toleration hath been granted by law; but admits, that an Act did pass in the first year of king William and queen Mary, entitled, "An Act for exempting their majesties' Protestant Subjects dissenting from the Church of England, from the Penalties of certain Laws." Which exemption the said Henry Sacheverell doth not any where maintain or suggest to be unreasonable, or that the allowance of it is unwarrantable; but hoped that he had prevented any such misapprehension, by declaring his sincere meaning in these words contained in his Sermon preached at St. Paul's; "I would not be here misunderstood, as if I intended to cast the least invidious reflection upon that indulgence which the government hath condescended to give them, which I am sure all those who wish well to our Church, are ready to grant to consciences truly scrupulous; let them enjoy it in the full limits the law has prescribed them."

If there be any other expressions concerning Toleration, which may seem to carry a dubious sense in any other parts of his Sermon, he hopes that they will not be applied to the exemption granted by law, but will be interpreted agreeably to his avowed approbation of that law.

And to such part of the said Second Article as charges, that the said Henry Sacheverell asserts, "That he is a false brother with relation to God, religion, or the Church, who defends Toleration and Liberty of Conscience;" he the said Henry Sacheverell saith, That he having so plainly declared himself in favour of the exemption granted by law, when he blames those, who, upon all occasions, defend Toleration and Liberty of Conscience, cannot be thought to reflect on the defenders of that legal exemption or indulgence which he himself approves and defends: he doth indeed suggest it to be one part of the character of a false brother, "upon all occasions to defend Toleration and Liberty of Conscience; and to excuse the separation, lay the fault upon the true sons of the Church, for carrying matters too high." Which universal defence of Toleration, and excuse of separation, attended with the laying the fault of such separation upon the true sons of the Church, are by him jointly mentioned

is one and the same clause of the sentence, and is but one and the same branch of the character. Is but his reflection doth not extend to all who blind Toleration and Liberty of Conscience, such law to those who defend the exemption granted by law to Protestant Dissenters; but such only, who at the same time they de- fend Universal Toleration and Liberty of Con- science, do also expose the separation and lay the fault thereof upon the true sons of the Church, for carrying matters too high. And these he did then, and still doth, with all hu- manity, conceive to be justly blameable, and, if members of this Church, to be False Brethren.

And as to that part of the Second Article, whereby the said Henry Sacheverell is charged with asserting, "That queen Elizabeth was deluded by archbishop Grindall, to the Tolera- tion of the Genevian discipline;" he the said Henry Sacheverell saith, He humbly conceives he hath good authority from the histories and monuments of those times for such assertion; but whether he hath, or hath not, he humbly apprehends such assertion to be no proof of his assuming or suggesting, that the exemption of Protestant Subjects dissenting from the Church of England, from the penalties of cer- tain laws, granted by an Act made in the first year of the reign of king William and queen Mary, (which exemption he supposes to be in- tended by the legal indulgence or Toleration granted to Dissenters, mentioned in the pre- amble of the Articles, and by the Toleration granted by law, mentioned in this Second Arti- cle) is unreasonable, or the allowance of it un- warrantable. For he is humbly of opinion, that there is a wide and manifest difference be- tween a toleration of the Genevian discipline, and an exemption of Protestant Dissenters from the penalties of certain laws; between a toleration allowed merely by the regal power, and an exemption granted by act of parlia- ment; which exemption he is so far from thinking unreasonable or unwarrantable, that from the bottom of his heart he wisheth it, under the same restrictions and limitations, extended to all her majesty's Protestant sub- jects throughout the whole kingdom of Great Britain.

And as to such part of the Second Article, whereby the said Henry Sacheverell is charged with "scurrilously calling the said archbishop Grindall a false son of the Church, and a perfi- dious prelate;" the said Henry Sacheverell humbly hopes, that any harsh expressions he hath used concerning that prelate, may be ra- ther excused, because the said archbishop hav- ing permitted innovations to be obtruded on the Church, did thereby incur the high displeasure of so good and pious a princess as queen Eliza- beth, by whose order he was suspended, and continued under such suspension to the day of his death. However, the said Henry Sache- verell presumes, that no words spoken of an archbishop, above 120 years since deceased, will, in construction of law, amount to an High Crime and Misdemeanor.

And as to such part of the Second Ar whereby the said Henry Sacheverell is ch with maintaining, "That it is the duty o perior pastors to thunder out their ecclesia anathemas against persons entitled to th nefit of the said Toleration;" he the said H Sacheverell saith, That he doth not ma or suggest, that it is the duty of superior tors to thunder out ecclesiastical anath against persons entitled to the benefit Toleration; which persons, where he s of such anathemas, are neither by him tioned nor intended; but if the expressio him unapplied to any, must be determin any one sort of persons, he humbly conc that the connection of his discourse will mine them to those schismatical and fa persons, who take permission for powe advance toleration immediately into an lishment; and such schismatical and fa persons, he humbly apprehends, are n persons entitled to the benefit of the exemption, which was designed only to some ease to scrupulous consciences exercise of their religion.

And as to the last part of the Second A whereby the said Henry Sacheverell is ch with insolently daring or defying any on earth to reverse such sentences: th Henry Sacheverell saith, That the se which he the said Henry Sacheverell any power on earth to reverse, is such such only, as is ratified in Heaven such sentence he still affirms to be by earthly power irreversible; and hopes not be thought insolence in him to s what he conceives would be blasphe any one to deny: and doth further ack ledge himself firmly to believe, that som tences pronounced by the pastors of the C are ratified in Heaven; and that some p exempted from punishment by the par laws of the land, may yet, by the la Christ, be justly liable to such sentence that schism, or a causeless separation f Church imposing no sinful terms of co nion, is a sin, which exposes the persons thereof to the censures of the Church.

Answer to the Third Article.

As to so much of the Third Artic charges the said Henry Sacheverell, Th doth falsly and seditiously suggest and that the Church of England is in a condi great peril and adversity under her maj administration; and that, in order to a and blacken the said Vote and Resolut both Houses of Parliament, approved majesty, he, in opposition thereto, dot gest the Church to be in Danger; th Henry Sacheverell denies that he hath asserted or suggested the Church of En to be in a condition of great peril and adv under her majesty's administration; t doth freely acknowlege, that he hath in h mon suggested, That when national sin ripened up to a full maturity, to call dow

geance from Providence on a Church and kingdom debauched in principles, and corrupted in manners, and instead of the true faith, discipline and worship, given over to all licentiousness both in opinion and practice, to all sensuality, hypocrisy, lewdness, and atheism, then we, (that is evidently) all the members of such a Church or kingdom, are in danger in such deplorable circumstances. And this suggestion of danger arising to a Church and kingdom from vice and infidelity, he humbly presumes is not opposite to the Vote of the two Houses, or seditious, but entirely agreeable to what is solemnly declared in an act of parliament made in the 9th and 10th of his late majesty king William the 3d, for the more effectually suppressing of Blasphemy and Profaneness; wherein it is affirmed, That many persons had of years openly avowed and published many blasphemous and impious opinions, contrary to the doctrines and principles of the Christian religion; greatly tending to the dishonour of Almighty God, which might prove destructive to the peace and welfare of this kingdom: And he conceives, that since the passing that act the detestable crimes, for the effectually suppressing of which that act was intended, have greatly increased. And the said Henry Sacheverell saith, the suggestions by him made of dangers arising to us from vice and infidelity, he apprehends to be in no wise more seditious or repugnant to the Vote of the two Houses approved by her majesty, than the like suggestions occurring in the solemn prayers of the Church authorised by her majesty, and frequently used before each House of Parliament; wherein we beseech God, that no sedition may disturb the state, nor schism distract this Church; and that he would give us grace seriously to lay to heart the great dangers we are in by our unhappy divisions.

And as to so much of the said Third Article, whereby it is charged, That the said Henry Sacheverell, as a parallel, mentions a Vote, that the person of king Charles the first was voted to be out of danger, at the same time that his murderers were conspiring his death; thereby wickedly and maliciously insinuating, that the members of both Houses who passed the said Vote, were then conspiring the ruin of the Church; he the said Henry Sacheverell doth say, that he doth not draw any parallel between the Vote concerning the king's person, and the late Vote of the two Houses, which he neither there, nor elsewhere in his Sermon, mentions, but had he suggested one Vote to be parallel to the other, which he hath not, yet would not he thereby have wickedly and maliciously insinuated, that the members of both Houses, who passed the late Vote, were then conspiring the ruin of the Church; but would only have intimated, that as some persons were conspiring the murder of the king, whilst others, no way privy to their wicked intentions, voted his person to be out of danger; so when the two Houses voted the Church of England to be in no danger under his majesty's administration, there might be some others who were conspiring the ruin of the Church; and many others, who, by their vice and infidelity, were drawing down God's vengeance both on Church and kingdom.

As the Vote of both Houses, made four years ago, did concern those only who did then insinuate the Church of England to be in danger under her majesty's administration; so it can not, he presumes, affect those who do now suggest the Christian faith, which is the foundation upon which every Christian Church stands, to be endangered by those atheistical and irreligious principles which are daily from the press propagated amongst us, notwithstanding the provision made by the said Act for suppressing blasphemy and profaneness: so that the said Henry Sacheverell thinks, that he might with truth affirm, (as he did in his Sermon preached at Derby) that there were never such outrageous blasphemies against God and all religion, natural as well as revealed vented publicly with impunity, in any Christian Church or kingdom in the whole world as at present in our own; of which assertion the said Henry Sacheverell is ready to produce undeniable and ample proofs, if called thereto.

Answer to the Fourth Article.

As to the Fourth Article, it contains several Charges of a very high and criminal nature, of which the said Henry Sacheverell knows his heart to be entirely innocent; and he observes with comfort, that whereas in the former three Articles he is said to have maintained or asserted, as well as to have suggested, the doctrines and things therein laid to his charge, in this fourth Article he is not accused of maintaining and asserting, but barely suggesting what is therein contained: and he humbly hopes, that bare suggestions or insinuations, could they with any colour or probability be made out, as he is fully satisfied they cannot, will not, under the most mild and gracious government, (at a time when several new laws have been made for securing the liberties of the subject) by your lordships, the great guardians of our laws and liberties, be adjudged sufficient to involve an English subject in the guilt and punishment of High Crimes and Misdemeanors.

To the several parts of the said Fourth Article, the said Henry Sacheverell doth in all humility answer: as to such part thereof whereby it is charged, that the said Henry Sacheverell, in his said Sermons and Books, doth falsely and maliciously suggest, that her majesty's administration, both in ecclesiatical and civil affairs, tends to the destruction of the constitution; he the said Henry Sacheverell saith, that he hath not made any mention, in either of his Books or Sermons, of her majesty's administration in ecclesiastical or civil affairs or of her ministers: so far is he from suggesting that her majesty's administration, both in ecclesiastical and civil affairs, tends to the destruction of the constitution, that amongst the inestimable blessings which are owing to our de-

liverance annually commemorated on the 5th of November, he reckons this to be one, That her majesty, the good and pious relict of the royal family, sits now happily upon the throne of her ancestors; and prays that God may long preserve her, for the comfort and support of the Church; and professeth, that what he spoke proceeded from a tender concern for her majesty's person and government; and in the Dedication also of his said Sermon preached at St. Paul's, solemnly declares, as he did before in his discourse, That his only aim and intention was earnestly to contend for the safety, rights, and establishment of her Majesty, together with those of the Church.

And as to such part of the said Fourth Article, whereby it is charged, that the said Henry Sacheverell doth suggest, that there are men of characters and stations in the Church who are false brethren; the said Henry Sacheverell saith, That the false brethren, as described by him in his Sermon, are either those who propagate false doctrines, or who give up the discipline and worship of the Church, or who are for a neutrality in religion, or who wish well to the Church of England, and are ready to sacrifice their persons and estates in their vindication, but do not shew their zeal in the communion of the Church, as well as for it, in obeying her precepts, as well as defending her rights. These being the several sorts of false brethren enumerated by the said Henry Sacheverell, if he should have suggested that there are men of characters and stations in Church and State, (words by no means restrained to the highest characters and stations) to whom the denomination of false brethren, in some or more senses of that word, as by him interpreted, doth belong, he humbly hopes that such suggestion would not be deemed false, malicious, or highly criminal.

And as to such other part of the said Fourth Article, whereby it is charged, that the said Henry Sacheverell doth suggest, "That there are men of characters and stations in the Church and State, who do themselves weaken, undermine, and betray, and do encourage and put it into the power of others who are professed enemies, to overturn and destroy the constitution and establishment;" the said Henry Sacheverell denieth, that he suggesteth any such things concerning men of characters and stations in Church and State. Where he speaks of those "who weaken, undermine, and betray, and encourage and put it in the power of our professed enemies to overturn and destroy the constitution and establishment," there men of characters and stations are not mentioned by him; and where he mentions men of characters and stations, twelve pages afterwards, the only place wherein he mentions them, there he speaks nothing of weakening, undermining and betraying, or encouraging, and putting it in the power of our professed enemies to overturn and destroy the constitution and establishment: and hopes, therefore, that he shall be no ways answerable for a supposed reflection, which depends upon the conjunction of passages so widely distant from, and so little relating to each other. The weakeners, underminers, and betrayers of our constitution, and the encouragers to whom the said Henry Sacheverell doth in any part of his Sermon refer, will, he presumes, upon a candid examination of those passages, appear to be one of these three sorts of persons; either, "First, such as by their writings endeavour to subvert the foundation of our Church and State; or, secondly, such, whether writers or others, who are for a latitudinarian heterogeneous mixture of all persons of what different faith soever, uniting only in Protestancy, which would let into her bowels those who neither believe her faith, own her own mission, submit to her discipline, or comply with her liturgy; which he afterwards stiles the model of an universal coalition; or, thirdly, those occasional conformists, who have so far eluded the Corporation and Test Acts, by their abominable hypocrisy, as to have undermined the foundations, and endangered the government, by filling it (as far as they could) with its professed enemies, that is, with themselves." Of all these, and their encouragers, the said Henry Sacheverell confesses himself to have suggested that they do, in his opinion, weaken, undermine, and betray the constitution: but that either these, or their encouragers, are men of characters or stations in the Church or State, he hath not any where suggested.

And as to such other part of the said Fourth Article, which charges the said Henry Sacheverell "with charging her majesty, and those in authority under her, both in Church and State, with a general mal-administration;" the said Henry Sacheverell saith, That he abhors the thoughts of bringing any charge against her sacred majesty, whom he never mentions but in terms of the profoundest duty and respect. Nor doth he tax those in authority with a general, or with any mal-administration; which is a word he hath never used, nor (as far as he can find) any other word or words by which the thing is implied. So far is the said Henry Sacheverell from making any undutiful reflections upon her majesty or her administration, that in the several writings that he has published since her happy accession to the throne, particularly in one which is an avowed defence of her title to the crown, and justification of her entering into a war with France and Spain, he hath expressed himself with the most hearty and loyal zeal for her majesty's person, government, and administration.

And as to such other part of the said Fourth Article, whereby it is charged, "that the said Henry Sacheverell, as a public incendiary, persuades her majesty's subjects to keep up a distinction of factions and parties:" the said Henry Sacheverell saith that he is so far from being guilty of this charge, that in his said Sermon "he invites the separatists to renounce their schism, and come sincerely into the Church;

and complains of those who have villainously divided us with the knavish distinctions of High and Low Church-men, and wishes we may be one fold under one shepherd; and that all those invidious distinctions that now distract and confound us, were lost, so that we might be terrible, like an army with banners, to our enemies, who could never break in upon such an uniform and well compacted body."

And to such other part of the said Fourth Article, as chargeth, "that the said Henry Sacheverell instills groundless jealousies, and foments destructive divisions among her majesty's subjects;" the said Henry Sacheverell saith, That in his said Sermon, he on the contrary rebukes and condemns those, who, by false insinuations, and raising groundless jealousies and fears, embroil the public, and bring it into confusion.

And as to such other part of the Fourth Article, whereby it is charged, "that the said Henry Sacheverell excites and stirs up her majesty's subjects to arms and violence;" the said Henry Sacheverell saith, God forbid that he should be guilty of so heinous a crime, who asserts the utter illegality of Resistance to the supreme power upon any pretence whatsoever; which assertion he conceives to be the chief, if not only ground of the charge exhibited against him in the First Article.

In confutation of this charge, he begs leave to recite one passage out of his Sermon preached at Derby in the following words: "We may be partakers of other men's sins, if we do not, to the utmost of our power, endeavour to prevent or obstruct their commission, when they manifestly endanger the good of the public: as we are members of any government, or society, we are all obliged in point of honour, interest and conscience, to maintain its security, promote its welfare, and guard it against factious designs, or seditious conspiracies, that may threaten its constitution, discompose its peace, or violate and subvert its laws. God and nature have invested every subject from his cradle, with a commission to engage, discover, and disappoint the enemies of his Church and Country; and he that is either privy to, industriously conceals, or any way abets their schismatical, illegal or rebellious enterprizes, both in the eyes of human as well as divine laws, is an accomplice and partaker in the guilt, a traitor to God and his prince, a patron and protector of injustice, and a common adversary to himself as well as all mankind." And the said Henry Sacheverell hopes, what he hath said in the Dedication of the same Sermon, "That there are not wanting some to preach the truth, and others to support it, at the expence of their lives and fortunes," will not be construed as exciting her majesty's subjects to sedition and rebellion; since that truth which he commends some for preaching, and others for supporting, is by him opposed to the attempts of those who betray and run down the principles and interests of our Church and Constitution; and since he there deservedly commends the high sheriff of that county, on the account of his steady loyalty and zeal to serve her majesty and the government, for which he hath been so remarkably distinguished.

In the Sermon preached at St. Paul's, he doth indeed excite Christians to put on the whole armour of God, as wrestling, not only against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places. But he hath learned from the same St. Paul, that the arms of resistance taken up by the subjects against the higher powers, are no part of the spiritual armour; and the principalities and powers by him mentioned being plainly distinguished from flesh and blood, cannot, he thinks, be so far misinterpreted, as to be understood of earthly potentates and rulers.

And as to so much of the said four Articles, whereby it is charged, that he the said Henry Sacheverell doth wickedly wrest and pervert divers texts and passages of Holy Scripture, that his said malicious and seditious suggestions may make the stronger impressions upon the minds of her majesty's subjects; the said Henry Sacheverell says, That having no malicious or seditious suggestions to imprint, he could not intend to wrest any passages of the Holy Scripture to that wicked purpose. Hard is the lot of the ministers of the Gospel, if, when they cite the Word of God in their general exhortations to piety and virtue, or in their reproofs of men's transgressions, or where they are lamenting the difficulties and conflicts with which the Church of Christ, whilst militant here on earth, must always struggle, the several texts and passages by them cited shall be said to have been by them meant of particular persons and things, and shall be construed in the most criminal sense, and be made by such construction one ground of an Impeachment for High Crimes and Misdemeanors.

And as to all other matters and things in the said Articles contained, and not herein before particularly answered unto, the said Henry Sacheverell saith, he is Not Guilty of them, or any of them, in manner and form as the same are charged upon him in and by the said Articles; and humbly submits himself to your lordships' judgment. HENRY SACHEVERELL.

THE COMMONS REPLICATION TO THE ANSWER OF DOCTOR HENRY SACHEVERELL.

The Commons have considered the Answer of Henry Sacheverell, Doctor in Divinity, to the Articles of Impeachment exhibited against him by the knights, citizens, and burgesses in Parliament assembled; and observe, that there are many things in it not warranted by the course of proceedings upon impeachments, foreign to the Charge of the Commons, unbecoming a person impeached, and plainly designed to reflect upon the honour of the House of Commons in this proceeding, for which they might demand your lordships immediate justice.

But the Commons being sensible that the nature of the crimes whereof he stands impeached, and the necessity of bringing him to a speedy and exemplary punishment, require that all occasions of delay should be avoided; and not doubting that your lordships will in due time vindicate the honour of the Commons, and the justice of their proceedings; the Commons do aver their Charge against the said Henry Sacheverell for High Crimes and Misdemeanors to be true, and that the said Henry Sacheverell is Guilty in such manner as he stands impeached, and that the Commons will be ready to prove their Charge against him at such convenient time as shall be appointed for that purpose.

Lord Chancellor. Gentlemen of the House of Commons, you may proceed with your Evidence.

Att. Gen. (Sir J. Mountague.) My lords, by command of the knights, citizens, and burgesses, in Parliament assembled, we appear in behalf of all the Commons of Great Britain, to make good the Impeachment against the prisoner at the bar, Dr. Henry Sacheverell.

The Misdemeanors he stands accused of are specified in the Articles which have been just now read to your lordships, and the facts there charged are laid to have been done with a wicked, malicious, seditious intention to undermine and subvert her majesty's government, and the Protestant Succession as by law established; to defame her majesty's administration; to asperse the memory of his late majesty king William; to traduce and condemn the late happy Revolution; to contradict and arraign the Resolution of both Houses of Parliament; to create jealousies and divisions among her majesty's subjects; and to incite them to sedition and rebellion.

My lords, if the Charge is made good (as I am apt to think it will,) I may presume to say, no words can either aggravate or alleviate the offence.

My lords, our proofs in this case will arise from Evidence which cannot be liable to the imputation of being over-awed by the weight of the prosecutors, or corrupted or perverted; for out of his own mouth we shall charge him, and by his own words and Sermons we shall convict him.

My lords, I can with truth say, that it is no small trouble to the Commons of Great Britain, to have this occasion of coming in this manner before your lordships: could they have satisfied themselves that her majesty's honour, the safety of her people, and the Protestant Succession as by law established, were not highly concerned to bring this man to speedy justice, they could very willingly have spared your lordships this trouble.

But when they considered of what import it was to the nation, how much it concerned the very being of our constitution, to discountenance and put an end to such sort of seditious proceedings as the Doctor and some others of his brethren have been lately practising in divers parts of the kingdom, they could not think otherwise, than that it was a matter fit for the grand inquest of the nation to take notice of: and finding it to be a cause of so great moment to the public, they judged it fit to be taken under their own management, and not trust it to the decision of any inferior tribunal. And, my lords, it must be agreed that your lordships are the only proper judges, when the whole Commons of Great Britain find it necessary to be the prosecutors; nor can Dr. Sacheverell have any just cause to complain of this manner of proceeding, when it gives him so public an opportunity of defending himself (if his innocence can clear him); and what can he desire more, when he lies under so heavy an accusation, than to have your lordships for his judges, who have already shewn your great indulgence to him, by allowing him (as the noble lord from the woolpack just now observed) all the advantages a man under his circumstances can ask, or desire to have?

My lords, This prosecution took its rise from a complaint that was made in the House of Commons the 13th of December last, of two Books which had been lately printed and published under the name of Dr. Henry Sacheverell. The Books being delivered in, several paragraphs were read; and by divers passages, too many for me now to enumerate to your lordships, it did plainly appear that both Books did contain very scandalous and seditious matter, highly reflecting upon the queen and her administration.

Hereupon the Doctor was ordered to attend; which he did accordingly the next day, and at the bar of the Commons' House owned and avowed both Books to be his; that they were Sermons he himself had preached; and that he had caused them to be printed and published.

After such a confession, your lordships may imagine her majesty's dutiful Commons did express their just resentments of the great wrong and injuries that were done to her majesty, and all that were in authority under her; and immediately ordered this impeachment.

Your lordships will perceive, by perusal of the Sermons and Epistles Dedicatory, that the design and drift of the same is to possess the people with strange notions, and terrible apprehensions of the danger they are in, by a general male-administration of the public affairs both in Church and State.

That both these Sermons were preached upon public occasions; and had, since the printing thereof, been handed about with more than ordinary application.

One of these Books is intitled, "The Communication of Sin," being a Sermon preached at the assizes held at Derby in August last: and because the Doctor thought he had not said enough against the queen and her government in the Sermon, he affixes a Dedication to it, wherein he affirms, That the principles of our Church and Constitution are shamefully betrayed and run down: that both are perse-

cuted, on the one side by rude and presumptuous insults, and base undermining treachery on the other; and that this persecution is carried on by associated malignants.

The other Sermon was preached at St. Paul's London, on the 5th of November, which is a day set apart for a general day of thanksgiving, for two very great deliverances vouchsafed to this nation, by the discovery of the Gunpowder-Plot, and the arrival of his late majesty king William, to redeem us from popish tyranny and arbitrary power.

My lords, when ye come to hear this Sermon read, I am confident that it must appear very strange to find, that when there were two such memorable occasions for the Doctor to have set forth his eloquence in a Thanksgiving Sermon, he should in great measure pass by both the businesses of the day, and entertain his audience with a long harangue of the deplorable condition the Church was in; not so much from Papists, (the avowed enemies of the Church) as from her pretended friends, as he calls them, the false sons of the Church, who were crept into her bowels, and shewn themselves to be perfidious brethren, by defending toleration and liberty of conscience, and favouring the Dissenters.

And to shew his little liking of the great work which was begun to be wrought on that day by the arrival of his late majesty, the chief turn of his discourse is, to cry up Non-Resistance and Passive Obedience.

And to make it most evident, that what he said of Non-Resistance, was to cast black and odious colours upon the Revolution; he lays down a general position, 'That it is not lawful, upon any pretence whatsoever, to make 'Resistance to the supreme power;' which supreme power, by other passages, he explains to be the regal power.

And being apprehensive, that every one that heard him talking in that manner against Resistance, would see plainly he was censuring and condemning the means that brought about the Revolution, and being desirous to cast as heavy reflections as he could upon the memory of king William, he asserts, 'That the Prince 'of Orange, in his Declaration, utterly disclaimed all manner of Resistance.'

My lords, every body knows, that knows any thing of the Revolution, That the Prince of Orange came over hither with an armed force; and that in several paragraphs of his Declaration, (the Doctor speaks of) His late majesty invites and requires all peers of the realm, both spiritual and temporal lords, all gentlemen, citizens, and other commoners, to come in and assist him, in order to the executing that design he had then undertook, against all that should endeavour to oppose him.

Therefore it must be accounted very ridiculous for the Doctor to advance such a position, if he had no further meaning in it, than to give an account of the Prince of Orange's design in coming over here into England.

And this will make it necessary for your lordships to consider what is the true meaning of this assertion: is it not plainly to make the Prince of Orange say one thing, and at the same time do directly another? And can this be done with any other design, than to asperse the memory of the late king William?

Then as to his discourse concerning Passive Obedience and Non-Resistance, in such latitude as is there mentioned; what could it tend to, but to cast reflections upon that Resistance, which was the means which brought about the Revolution?

For was there any occasion at that time to be so earnest to cry down Resistance, and preach up Passive Obedience?

Can any one pretend to say, there were any symptoms of discontent throughout the nation, in any parts thereof?

No: to our comfort be it spoken, no reign, no age, no history, can give a better account of the good dispositions of the people to their sovereign. Therefore, since the preaching these doctrines was needless, it does savour of some wicked design, to be talking so unseasonably of this subject.

If what the Doctor very frequently asserts in this Sermon be true, That all are false sons of the Church, who assisted in bringing about the Revolution, or that joined in the opposition that was made to the encroachments which were begun by evil ministers in the reign of king James 2, against our religion and liberties; let the Doctor a little consider, how far his character of a False Brother may be carried!

Every body knows, that lived in those days, that the body of the clergy of the Church of England made a noble stand against the encroachments which were then making, and appeared as active as any of the laity.

And was it not by their writings, preaching, and example, that the nobility and gentry were animated to maintain and defend their rights, religion and liberties? And as an undoubted monument that this was the sense of the whole kingdom at the time of the Revolution, it is entered in the Journal of the House of Commons, on the 1st of February, 1689;

"That the unanimous Thanks of the House was given, nem. con. to the Clergy of the Church of England, for the great service they had done their religion and country, by the opposition they had made to the execution of the Ecclesiastical Commission, and their refusing to read the king's Declaration for Toleration, which was then founded upon the dispensing power."

And how did the archbishops receive the message that was sent them upon this occasion, that they might communicate that resolution to the clergy in their respective dioceses?

Our Journals tell us, that Mr. Levison Gower the next day acquainted the House of Commons, that he had attended the two archbishops, according to order, with the Thanks of the House; and that archbishop Sancroft, and the then archbishop of York, returned their

Thanks to the Commons for themselves, and in behalf of all their Clergy, for their favourable Vote.

Your lordships see, the Commons were then happy enough to be thought favourable to the clergy of the Church of England; and yet these very Commons were the men who passed the Toleration-Act, for exempting Protestant Dissenters from the penalties of certain laws, as one of the most necessary acts for the good of the kingdom.

And were they not encouraged to go about that charitable work, by the Petition of the Seven Bishops, presented to king James; wherein they acquainted him, That it was not for want of a due tenderness to Dissenters, which made them refuse reading his Declaration for Toleration to Dissenters; in relation to whom, they were willing to come to such a temper as should be thought fit, when the same came to be considered in parliament.

But now the same hath been considered in parliament, and the Toleration hath been settled and established by the legislative authority of the kingdom, and hath been ratified and approved of in his reign, by her majesty and both Houses of Parliament; Dr. Sacheverell belike disapproves of it, and is pleased to tell us in a most extraordinary manner, That a man must be very weak, or something worse, that thinks or pretends the Dissenters are to be gained by any other grants and indulgences, than giving up our whole constitution: and he that recedes the least tittle from it, to satisfy and ingratiate with these clamorous, insatiable, church-devouring malignants, knows not what spirit they are of.

After such an ample declaration of his opinion, what fatal consequences will attend the granting indulgences to Dissenters! can the Doctor imagine, that his saying, in his Answer to the Articles, That he intends not to cast the least invidious reflection upon that indulgence the government has condescended to give them, will take off the hard censures he hath passed upon Dissenters?

And, my lords, if an archbishop, who hath been dead almost 120 years, cannot be permitted to rest quiet in his grave, but must have foul aspersions cast upon his memory, as being a false son, and a perfidious prelate of the Church, for interceding (as Dr. Sacheverell says) with queen Elizabeth for the Dissenters in those days: what must the present archbishops and bishops of our Church expect from Dr. Henry Sacheverell, if they do not thunder out their ecclesiastical anathemas against Dissenters, as often as the Doctor shall think there is occasion for them?

My lords, I perceive the Doctor hopes to make all he hath said against Toleration to Dissenters, by a nice distinction he hath hit upon between an indulgence and a toleration.

Therefore he tells your lordships, That upon the most diligent enquiry, he hath not been able to inform himself that a Toleration hath been granted by law.

Can the Doctor pretend to say, that this word Toleration has never been made use of to express the religious liberty and indulgence that is granted and allowed to Dissenters? If we wanted authorities to justify the use of the word, after the Doctor has made use of it in the same sense over and over, in many passages in his Sermons, as will be taken notice of by the gentlemen that are to make good the second Article, the Doctor might be put in mind, that her majesty in her Speech from the throne, on the 17th of December, 1705, hath been pleased to declare, That she will inviolably maintain the Toleration.

My lords, as the time was most unseasonable for the preaching such doctrines as these, so the place was very improper for a lecture of politics: for your lordships do perceive this latter Sermon, which was preached on the 5th of November last, was preached in the great metropolis of this kingdom, before the lord mayor, aldermen, and citizens of London; from whose steady loyalty to her majesty, and firm affections to the Revolution, such vast sums have been contributed for carrying on this long war against France, which hath proved so fatal to the French king, and other enemies of this kingdom.

And what more likely to give a fatal wound to the public credit at this time, than such doctrine, which tends to the overthrow of all the acts of parliament which have been made in support of this constitution?

And how strange an attempt was it for the Doctor to preach against the Revolution and this government, before those citizens who owe the restoration of their charters, and all their franchises and immunities to it?

But, to do justice to the Doctor he in his Answer denies, he hath said any thing of the means which brought about the Revolution.

And, if your lordships can believe him, he says, he has endeavoured to vindicate the Revolution from the black and odious colours the enemies of the Revolution would throw both upon that and his late majesty.

To what end and purpose then are these doctrines preached with so much vehemence at this time, unless it be to reflect backwards upon what was done at the time of the Revolution?

There is certainly no occasion to preach Non Resistance to her majesty's loyal and dutiful subjects, who have never shewn the least inclination to give disturbances to this present government.

Was there ever known a time, in which there was so universal an agreement in all ranks and degrees amongst us? Does not every one almost strive to shew their zeal and affection for her majesty and her government? If there be any that are less quiet than their neighbours, we shall find them amongst the friends of Dr. Sacheverell, who are professedly no friends to the Revolution. Nothing is more certain, than that all that are not satisfied with what was done at the time of the Revolution, must be enemies to the present estab-

lishment: and it is from this source, all these declamations against men of character and station both in Church and State, do proceed.

But I would have the Doctor consider, that we have laws to punish spreaders of false news, and horrible stories, of the great men and great officers of the kingdom; and it is to put a stop to these malicious practices now on foot, that this delinquent is now brought to this bar.

When we shall have read our several proofs, which will justify every particular charged on the Doctor in the Articles of Impeachment, the Commons will not doubt of your lordships' Judgment against this Defendant.

Mr. *Lechmere.* My lords, I am commanded to assist in stating to your lordships the grounds of the Charge of the Commons, and the nature and tendency of the crimes now before you in judgment.

Your lordships have had opened to you an Impeachment of the Commons of Great Britain: the subjects of both nations had an equal concern in that which is the ground of it: they are happily united in this prosecution; and the common interest of your lordships, and us all, is inseparable in its event.

I need say no more to your lordships of the greatness of this cause; not for the person of the offender, but for the high importance of those matters which he has presumed to draw in question.

The Commons, on their part, have been exceeding careful in every step of this proceeding, that it should receive a deliberation suitable to the weight of the cause, and the dignity of the Commons; and they observe it to your lordships, with great satisfaction, that by your ready concurrence, no difficulties have arisen to delay or discourage their Impeachment. They ascribe this to a desire in your lordships, equally with themselves, to cultivate a good correspondence on so important an occasion, and to that due regard your lordships shew to the course of Impeachments, the ancient right, and great security of the Commons.

In framing their Charge, the Commons have thought fit, by a preamble to their Articles, to lay before you the grounds of their accusation, in terms the most cogent and expressive; to the end your lordships might have early and perfect notice of the points on which the Commons intended to proceed; that your lordships, and the whole kingdom, might know the unanimous and hearty zeal of the Commons, to assert the justice of the late happy Revolution, and the foundations of her majesty's government and administration; and that the Judgment of the Commons, on this weighty occasion, might stand fully on the Records of Parliament, and be transmitted to all posterity.

Your lordships will observe, in reading their evidence, many things excepted to by the Commons, precedent to the ground of their first Article; but you will soon perceive, that all parts of the design of the prisoner center in that. They could not therefore have acquitted themselves, if they had not made that their foundation: being firmly convinced, they never can have the honour and justice of that glorious work too much at heart; nor be too jealous of those, who under any pretences, though never so specious, shall attempt to lessen it. And when they consider the certain dependance that the justice of the late Revolution itself must have upon the steps that led to it, they can have no doubt but your lordships will think him equally criminal, who condemns the means by which it was effected.

My lords, The necessary means (which is the phrase used by the Commons in their first Article) are words made choice of by them with the greatest caution. Those means are described (in the preamble to their Charge) to be that glorious enterprize, which his late majesty undertook with an armed force, to deliver this kingdom from Popery and Arbitrary Power; the concurrence of many subjects of the realm, who came over with him in that enterprize, and of many others of all ranks and orders, who appeared in arms in many parts of the kingdom, in aid of that enterprize.

These were the means that brought about the Revolution, and which the Act that passed soon after, declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown, intends when his late majesty is therein called the glorious Instrument of delivering the Kingdom; and which the Commons, in the last part of their first Article express by the word Resistance.

But the Commons, who will never be unmindful of the allegiance of the subjects to the crown of this realm, judged it highly incumbent upon them, out of regard to the safety of her majesty's person and government, and the ancient and legal constitution of this kingdom to call that resistance the *necessary* means thereby plainly founding that power, of right and resistance, which was exercised by the people at the time of the happy Revolution and which the duties of self-preservation and religion called them to, upon the necessity of the case; and at the same time effectually securing her majesty's government, and the due allegiance of all her subjects.

Your lordships will find, that the prisoner in his Sermon preached at St. Paul's, has asserted a doctrine in direct defiance and contradiction of that Resistance used to bring about the Revolution; when he affirms the utter illegality of Resistance, on any pretence whatsoever, to be a fundamental of our constitution: and, as your lordships will hear fully made out from the proofs, by those gentlemen to whom that part is assigned, he has also plainly declared himself, that even the Resistance used at the time of the late happy Revolution, is not to be excepted out of his fundamental rule.

My lords, when a preacher of the Gospel and a minister of the Church of England even under this happy establishment, shall

thus publicly condemn the foundations on which it stands, in defiance of her majesty and the great council of the nation then sitting in parliament; it becomes an indispensible duty upon us, who appear in the name, and on the behalf of all the Commons of Great Britain, not only to demand your lordships' justice on such a criminal, but clearly and openly to assert our foundations.

I crave leave to remind your lordships of the condition of things in both kingdoms immediately preceding the late Revolution: the case is stated and recorded, between the late king James and the subjects of both kingdoms, in the several Declarations of the Rights of both nations made by them at that time.

I shall forbear to aggravate the miscarriages of that unhappy prince, further than by saying, that it is declared in the preamble to the bill passed in England, That by the assistance of evil counsellors, judges and ministers, employed by him, he did endeavour to subvert and extirpate the Protestant Religion, the laws and liberties of the kingdom, in the several instances there enumerated. And in that passed in the kingdom of Scotland, it stands declared, That, by the advice of evil counsellors, he did invade the fundamental constitution of that kingdom, and altered it from a legal limited monarchy, to an arbitrary despotic power.

Your lordships, on this occasion, will again consider the ancient legal constitution of the government of this kingdom; from which it will evidently appear to your lordships, that the subjects of this realm had not only a power and right in themselves to make that Resistance, but lay under an indispensible obligation to do it.

The nature of our constitution is that of a limited monarchy, wherein the supreme power is communicated and divided between Queen, Lords, and Commons, though the executive power and administration be wholly in the crown. The terms of such a constitution do not only suppose, but express an original contract between the crown and the people; by which that supreme power was [by mutual consent, and not by accident] limited and lodged in more hands than one: and the uniform preservation of such a constitution for so many ages without any fundamental change, demonstrates to your lordships the continuance of the same contract.

The consequences of such a frame of government are obvious: that the laws are the rule to both, the common measure of the power of the crown, and of the obedience of the subject; and if the executive part endeavours the subversion, and total destruction of the government, the original contract is thereby broke, and the right of allegiance ceases: that part of the government thus fundamentally injured, hath a right to save or recover that constitution in which it had an original interest.

Nay, the nature of such an original contract of government proves, that there is not only a power in the people, who have inherited its freedom, to assert their own title to it, but they are bound in duty to transmit the same constitution to their posterity also.

It is mis-spending your lordships' time to illustrate this: it is an eternal truth, essential to the government itself, and not to be defaced or destroyed by any force or device.

That the rights of the crown of England are legal rights, and its power stated and bounded by the laws of the kingdom; that the executive power and administration itself is under the strictest guard for the security of the people; and that the subjects have an inheritance in their ancient fundamental constitutions, and the laws of the land, appears from every branch of this government. It is the tenor of all antiquity; our histories and records afford innumerable proofs of it: and when your lordships look back on the history of Magna Charta alone, you cannot doubt of the sense of our ancestors, that they were masters of franchises that were truly their own, and which no earthly power had right to extort from them. Many others, of incontestable authority, are those valuable relicts which our popish ancestors have left us, as proofs of the freedom of our constitution, of the constant claims they made, both in and out of parliament, to their inheritance in their laws against the encroachment of arbitrary power; and when the last extremity called them to it, they never failed to vindicate them by the arms of Resistance.

"Such was the genius of a people, whose government was built on that noble foundation, not to be bound by laws to which they did not consent; that muffled up in darkness and superstition, as our ancestors were, yet that notion seemed engraven on their minds, and the impressions so strong, that nothing could impair them."

Upon the Reformation of religion, when all foreign power was abolished, and the supremacy of the crown was restored to its height by many acts of parliament, your lordships will always find declarations at the same time made of the rights of the people; particularly that of the 25th of H. 8, where it is said, That the realm of England is free from any man's laws, but such as have been devised, made and ordained within the same, for the wealth of it; or such other, as the people of the realm have taken at their free will and consent, and by long use have bound themselves to, as the ancient established laws of the realm, and none otherwise.

Your lordships will, I doubt not, consider those laws made at that time, to be fresh and remarkable declarations and ratifications of the original contract.

This excellent constitution of our government has been, through many struggles, preserved from that time to this, and the true spirit of the English nation still kept alive down to the times of the late happy Revolution; so

which time the danger being imminent, not only to the laws and liberties of the kingdom, but to the Protestant Religion, the ancient virtue of the English nation exerted itself, and shone out in its full lustre, in that glorious work.

The many laws passed since, more particularly those for the Settlement of the Crown and Succession, are so many repeated declarations of their late majesties, and her majesty now on the throne, together with the representative body of the nation, in confirmation of their ancient constitution. Nay, my lords, we have higher testimonies to appeal to; the many glorious successes with which God Almighty has blessed the arms of her most sacred majesty, employed in defence of the arms of Resistance, are so many testimonies from Heaven in our vindication.

Your lordships take notice on what grounds the Doctor continues to assert the same position in his Answer. But is it not most evident, that the general exhortations to be met with in the Homilies of the Church of England, and such like declarations in the statutes of the kingdom, are meant only as rules for the civil obedience of the subject to the legal administration of the supreme power in ordinary cases? And it is equally absurd, to construe any words in a positive law to authorize the destruction of the whole, as to expect, that King, Lords, and Commons should, in express terms of law, declare such an ultimate resort as the right of Resistance, at a time when the case supposes that the force of all law is ceased.

But the Commons think he hath, by his Answer, highly aggravated his crime, by charging so pernicious a tenet, as that of absolute, unlimited Non-Resistance to be a fundamental part of our government, and by asserting this as the doctrine of the Church of England.

It is a great reproach to the excellency of our constitution, to impute such principles to it as inevitably infer its destruction; and an equal dishonour to the crown of this realm, the great glory of which is to be set over and govern a nation of free-born subjects, the meanest of which has an inheritance in the government and the laws equal with the greatest.

They likewise esteem it an high reflection on religion itself, and the Church of England, to charge its purest doctrines with such constructions, by which all irreligion and oppression would be authorized.

The Commons must for ever consider themselves under the strongest obligations of gratitude to our great Deliverer, to assert the honour and justice of that Resistance by which he rescued an oppressed people from inevitable destruction; and think they should not deserve the name of subjects of Great Britain, or the least blessing of so good a government, if at this time before your lordships, and for ever hereafter, they did not assert, in the most strenuous manner, the honour and justice of that Resistance which brought about the late happy Revolution. And upon this foundation it is, that they doubt not but your lordships will, in a parliamentary way fasten a brand of indelible infamy on that enslaving tenet by which it is condemned.

I shall take up less of your lordships' time on the following Articles.

The Commons esteem the Toleration of Protestant Dissenters to be one of the earliest and happiest effects of the late Revolution, wisely calculated for the support and strengthening the Protestant interest, the great end of the Revolution itself.

They remember, with the highest gratitude to her majesty, her royal resolution declared from the throne, to preserve it inviolably; and they observe to your lordships, that it appears to them from a report on their own Journals of a Conference between both Houses, on the Bill against Occasional Conformity, (not meant to enlarge the liberties of Protestant Dissenters) that the persecution of Protestants is, in the preamble to that Bill, declared to be contrary to the Christian Religion, and the doctrine of the Church of England, and that the Act of Toleration ought to be kept inviolably; and the Commons find no exception then taken by your lordships to that declaration; but on the contrary, many expressions from both Houses, highly extolling the policy and good effects of that law.

Your lordships will perceive, from the evidence of the Commons, many plain declarations of the prisoner in maintenance of this Article; but we offer it to your lordships, as a further evidence, that he most shamefully arraigns the memory of a prelate, eminent for his zeal to the Protestant religion, for his compassionate intercessions with queen Elizabeth in favour of dissenting Protestants; a reflection plainly meant by him to cast an odium on the Act of Toleration, and on the present Fathers of the Church so eminent for their charity and moderation; and from the applauses he gives to the severities shown by that queen, he illustrates the calumny thrown by him on her present majesty, and her approbation of the Toleration: Your lordships will duly consider the malignity of expressions meant to condemn so good a law, now standing in its full force, and to encourage the unchristian principles of persecution.

The latter part of the Second Article is founded on the legal supremacy of the government in matters ecclesiastical, by which all ecclesiastical jurisdiction, by the ancient undoubted laws of the kingdom, is made subject to the civil power.

The prisoner, in terms very unbecoming, has struck at this essential part of our constitution, in those words; wherein, after having persuaded the superior pastors of the Church to thunder out their anathemas against Protestant Dissenters, he defies any earthly power to reverse such sentences.

My lords, the restoring the legal supremacy

of the crown, was the effect of the Reformation of religion in this kingdom; and the abuse of that power to the apparent danger and destruction of the Church of England, in the instance of the late illegal Ecclesiastical Commission, remains condemned by the Bill of Rights.

But the Commons crave leave to observe, that the independent power or jurisdiction of the Church, or of ecclesiastical judges, which is the doctrine advanced by the prisoner, is no less dangerous. It stands in utter defiance and contradiction of Magna Charta, and the laws of the land; it is destructive of the legal supremacy of the crown and legislature; a violation of the oath of supremacy; contrary to the principles of the Reformation, and the doctrine and interest of the Church of England, of which he is a member.

The Commons are strengthened in their concern for the legal supremacy when they call to mind her majesty's Letter to his grace of Canterbury, of the 25th of February 1705, for proroguing the Convocation; wherein her majesty is pleased to declare her constant care and endeavours to preserve the constitution of the Church of England as by law established, and her resolution to preserve the supremacy, as being a fundamental part of it: and upon these considerations, they have an absolute assurance of an equal regard on your lordships' part, to a matter of so great importance.

Your lordships will observe the Third Article to be included within the general Charge of the fourth: but the Commons being sensible, with how distinguished a malice the substance of this charge is levelled by the prisoner against the honour of her majesty and the two Houses of Parliament, they thought it their duty to her majesty to lay this before your lordships in a distinct Article, for your particular consideration and judgment.

When your lordships reflect on the late heavy censure, which the queen and both Houses so justly laid on the authors of the like groundless slander, you will think that the prisoner has revived and avowed the same, from an inveterate pride to signalize his enmity to her majesty and both Houses, and in the most public manner to insult the honour of the queen and legislature, at the same time that he was endeavouring to subvert their foundation.

The Commons will ever shew the utmost jealousy for the safety and honour of her majesty's person, and must always esteem it their peculiar concern to vindicate every attempt that shall be made against it; and assure your lordships, they cannot be forgetful of that signal regard her sacred majesty shewed to the Church of England, at the time of the late Revolution; of that constant, uniform zeal she has expressed for it from that day to this; that perpetual monument of her royal bounty to the Clergy of the Church of England, to the diminution of her own revenue; nor of her royal care for the perpetual establishment of its discipline and worship, in making it a fundamental and essential part of the Union of the two Kingdoms: These things they esteem an absolute security, that her royal protection and affection for the Church of England can never fail.

The Commons doubt not of your lordships particular notice of the parallel mentioned in this Article, by which your lordships will collect the inveteracy of the design from the odiousness of the comparison.

In their Fourth Article the Commons have laid before your lordships many Charges; which, though of different considerations, yet all conduce to the main Charge of the Commons, as tending to undermine her majesty's government, and to raise sedition and rebellion.

Your lordships will find, from many and pregnant proofs supporting this Article, that her majesty's administration, whereby she has justly gained the affections of all her true subjects, is represented by the prisoner as deserving the utmost odium and contempt of her people.

That the civil and religious rights of her subjects, which her majesty has protected with the tenderness of a most indulgent mother, are betrayed by those to whom she has committed the care of them, and that they are now in a condition more calamitous than at that time when superstition and tyranny were ready to have swallowed them up.

Your lordships will find him labouring to persuade the people, that the condition of peace and prosperity which the good government of her majesty has secured to her kingdom, is a state of utter distraction and confusion, wherein all irreligion and disorder is not only unpunished, but encouraged.

Nor will your lordships wonder to find a person, who has set himself to weaken the title of her majesty to the throne, representing her administration like that of one who has no title at all.

And from this ruinous and almost irretrievable posture of affairs, your lordships will find him considering himself as a peculiar messenger, appointed and called out to open the eyes of the deluded people, and to undeceive a nation thus abused. And this, my lords, he has done, not in the words of meekness and peace; not by exhorting them to the exercise of the submissive doctrines of Passive Obedience and Non-Resistance: but he assures them, that he does not come to preach peace, but to sound a trumpet; he endeavours to excite such true sons of the Church as are of his persuasion, to recover, defend, and maintain, with their lives and fortunes, their invaded rights, and such doctrines as he has thought fit to deliver to them.

My lords, I take liberty to acquaint your lordships, that the Commons conceive, that the laws and statutes of the realm, and the order and peace of government, necessarily injoin it as a duty upon all private subjects, to represent their sense of the nation's grievances in a course of law and justice, and not otherwise; and whenever the oppressions become

national or public, they claim it as the peculiar right of their own body, to pursue the evil instruments of them, till public vengeance be done; and at the same time the Commons assure your lordships, that they will account it their indispensible duty to her majesty and their country to assert the justice and wisdom of her administration, against the enemies of both.

I have thus stated to your lordships the nature of this cause; wherein, I persuade myself, you perceive many points of the highest moment to the peace and welfare of the kingdom.

The tendency of the crimes, of which the prisoner stands accused, lies open and apparent: But I yet beg your patience, to draw the scene a little closer.

Your lordships will consider the necessary consequence of a position, meant and expounded so as to persuade the world, that the glorious work of the Revolution was the fruit of rebellion, and the work of traitors. Does it not declare the late reign to be one continued usurpation? And under what better circumstances does it bring the present?

Is the Act of Toleration condemned with any other tendency than to weaken so great a support of the Revolution itself? And I intreat your lordships to consider the certain fatal effects of an universal dissatisfaction of the people, in things that concern them nearest, the safety of the Church of England, and the Protestant interest, and the security of themselves and their posterity.

It is true, my lords, that, considered at a distance, there seems a repugnancy in this gentleman's system. How comes it to pass, that absolute Non-Resistance and the spirit of rebellion stand so well together, and are made so suitable, in the same discourse?

But, if your lordships should discern, in any part of his Sermon, any dark hints, or disguised opinions, of a sole Hereditary Right of Succession to the crown, that will shew your lordships the true consistency of the whole; your lordships will find, that in his opinion, the duty of the absolute Non-Resistance is owing to him only that has the divine commission to govern; and from thence your lordships cannot fail of knowing against what queen, what government, what establishment, he encourages the taking up the arms of Resistance.

I have thus endeavoured to discharge the trust reposed in me by the Commons, and am not unsensible how far short I have fallen; but, my lords, I assure myself that the cause cannot suffer by it, its own strength and vigour will support it at this time, and so long, I hope, as the nation endures.

Your lordships see plainly, that the duty of the Commons, which they will always discharge, called upon them very loudly to make inquisition on so remarkable an offender as the prisoner at the bar.

Your lordships see they had not acquitted themselves aright, if they had intrusted the prosecution of this great cause in any other hands but their own, or suffered these points to have been handled in any place but in full parliament; or before any other judicature but that of your lordships: And it is with the greatest cheerfulness and security, that they submit the cause of the queen, of the whole nation, of the Protestant Religion, and Protestant Succession, to the weight and wisdom of your lordships' judgment.

Attorney General. I did acquaint your lordships that there were two Sermons delivered into the House of Commons, which I desire may be now delivered in, and read to your lordships. We must desire Mr. Jodrell to give an account where he had those Books in his hands.

Then Mr. *Jodrell* was sworn.

Mr. *Jod.* These two Books were delivered in at the table of the House of Commons by one of the members.

Att. Gen. Were they shewn to Dr. Sacheverell when he attended the House?

Jod. They were shewn to him at the bar of the House.

Att. Gen. Did he own them to be his Books, or what did he own about them?

Jod. That which is the Sermon preached the 5th of November, he owned to be his, and that he directed it to be printed.

Then that Book was delivered in.

Att. Gen. There is another Sermon which was preached at the assizes at Derby, that was also shewn him at the bar, and he owned it.

Lord Chancellor. What say you as to the Preface of the other Sermon?

Jod. He owned the Dedication of it to be agreeable with the Dedication of that impression which he ordered to be printed.

Att. Gen. We pray the Dedication may be shewn to him; if he denies it, we are ready to prove it by the printer.

Sir *Simon Harcourt.* My lords, the Doctor did own the Sermon, and the Dedication of both the Sermons before the House of Commons; and he will not give your lordships the trouble of hearing any proof of them. He doth own them.

Att. Gen. Then we desire they may be read.

Clerk reads the Dedication of the Derby Sermon, and the Dedication and Sermon at St. Paul's:

"The DEDICATION of a SERMON preached at the Assizes held at Derby, August 15, 1709, by Henry Sacheverell, D. D. Fellow of Magdalen College, Oxon, and Chaplain of St. Saviour's Southwark.

"To the Right Worshipful GEORGE SACHEVERELL, Esq. High Sheriff of the County of Derby; and to the Honourable Gentlemen of the GRAND JURY, Gilbert Thacker, Robert Wilmot, John Fitz-herbert, John Beresford, Henry Vernon, William Cook, William Cavin-

Esqrs. Francis Pole, William Horton, George Savill, William Brown, Paul Balledon, James Chetham, William Wolley, Esqrs. George Turner, Gent.

"Gentlemen; the peculiar honour you were pleased to confer upon me after the delivery of this plain Discourse, was so signal, that nothing less than this public acknowledgment can acquit me of ingratitude.

"Now, when the principles and interests of our Church and Constitution are so shamefully betrayed, and run down, it can be no little comfort to all those who wish their welfare and security, to see, that notwithstanding the secret malice, and open violence they are persecuted with, there are still to be found such worthy patrons of both, who dare own and defend them as well against the rude and presumptuous insults of the one side, as the base, undermining treachery of the other; and who scorn to sit silently by, and partake in the sins of these associated malignants.

"Though the truth seems to be so much forsaken at present, yet, God be thanked, they shall yet find, to our honour, that we have still amongst us those who have courage to speak it, as well as those who have lives and fortunes to maintain it: and though the age is sunk into the lowest dregs of corruption that it cannot endure sound doctrine, there are not wanting some to preach it, and others to support it, at the expence of both. May the influence of your good examples, which as much animates our friends, as it terrifies our enemies, be as diffusively prevailing, as it is nobly conspicuous; and the blessing of that Church attend you, which you so eminently adorn and sustain!

"And, as I am obliged by the relation I have the honour to bear your family, may a double portion of the divine favour rest on you, (Mr. High Sheriff) whose commands I was very ready to execute in this office, since you thought neither the advancement of your years, so generously expended for the good of your country, nor the great trouble attending this post, sufficient to exempt you from shewing that steady loyalty and zeal to serve her majesty and the government, for which you have been so remarkably distinguished.—I am, with all regard, Gentlemen, your very humble servant, HENRY SACHEVERELL."

"THE PERILS OF FALSE BRETHREN,

"BOTH IN CHURCH AND STATE:

"Set forth in a SERMON preached before the Right Hon. the Lord Mayor, Aldermen, and Citizens of London, at the Cathedral Church of St. Paul, on the 5th of November, 1709. By Henry Sacheverell, D. D. Fellow of Magdalen College, Oxon, and Chaplain of St. Saviour's, Southwark.

"To the Right Honourable Sir SAMUEL GERRARD, Bart. Lord Mayor of the City of London.

"My lord; by your lordship's command, this Discourse ventures to appear in public, in contempt of all those scandalous misrepresentations the malicious adversaries of our Church have traduced it with, and that impartial sentence it had the honour to receive from some of those acute and wise judges, who condemned it without sight or hearing. But it is no new thing with some men to censure at random what lies out of their sphere; examining a cause may prove dangerous, for fear of their own conviction of its merits. When men are resolved to leap into a gulph, the best way is to shut their eyes, for fear they should see their danger, and repent of their folly. When they are thus abandoned and given up to ruin, the charitable hand, that would hold out an unwelcome light to prevent it, must expect to be treated with that ungrateful insolence and reproach, which usually attends the generous freedom of those who dare speak seasonable and necessary truths. That patient's case, doubtless, is very desperate, that sets himself against his cure; and when men are so stupidly hardened in their errors as to resist the most glaring evidence, there is no room for argument, or Gospel. Moses and the Prophets may, with Christ and his Apostles, be banished our synagogues, when truth must be oppressed by number, and noise and rebellious appeals to the people, as the only judges of right and wrong, and the dernier resort of justice and dominion. Are not these the fashionable methods now made use of to overbear, and silence our Church, to affront and revile our legislature, in order to break in upon the prerogative of the Crown? By threatening them with imaginary legions, and a popular tribunal, where their authority and establishment are to be tried and determined? To put a stop to which dangerous and encroaching mischief, that now with impunity walks up and down through this distracted kingdom, I thought it my duty (being summoned to this office by your lordship) to discharge it in the best method I could, to preserve us from these malicious designs, by endeavouring, if possible, to open the eyes of the deluded people in this our great metropolis; being conscious of what prodigious importance it is to the welfare of the whole nation, to have its rich and powerful inhabitants set right in their notions of government, both in Church and State; that they may not be flattered into their ruin, but seeing the fatal consequences of these damnable false doctrines, which some seditious impostors have laboured to poison them with, may forsake and detest them. I am confident, my lord, that this glorious and renowned city can boast of so many excellent examples of unshaken steadiness, disinterested probity, and true zeal and loyalty for our Church and Sovereign, that if they would act with the same open and undaunted resolution your lordship does, these affrighting phantoms must vanish. But if honest gentlemen will sit still, and give up their cause, through want of courage, or a just sense of the

dangerous attempts of our enemies, without the spirit of prophecy, we may foretel what will become of our constitution, when it is so vigorously attacked from without, and so lazily defended from within.

"We are told by these men, who would fain shut both our eyes, and our mouths, in order the more effectually to undermine and destroy us, that the pulpit is not a place for politics; and that it is the business of a clergyman to preach peace, and not sound a trumpet in Sion: so expressly contrary to the command of God, to 'cry aloud, and spare not.' My lord, I was humbly of opinion, that the Fifth Commandment was genuine; the Fanatics would do well to strike that dangerous precept out of the decalogue, as the Papists have the second, that neither might rise in judgment against these united friends and brethren. Now, as this stands the first in the second table, is it not of the utmost importance to be rightly understood, as containing the principal duty that we owe to God's vicegerents, which has been so scandalously and villainously misinterpreted of late, to the great dishonour of both? Certainly our Church thought so formerly, when it took such care to guard our obedience with more Homilies concerning the peril of rebellion, than any other sin. And when was more reason for enforcing their doctrines than now, when we see these admirable dissuasives against faction and sedition, maliciously wrested to countenance and support it? If our excellent constitution apprehends no hazard from these licentious proceedings, I am sure those who would defend it from them, have reason to do so, with regard to their own persons: our pastors cannot do their duty, without being menaced for it, and slandered by the vile amanuenses of the mob, to expose us to their fury, as Papists, and men disaffected to her majesty's government, whose safety, rights and establishment, together with those of the Church, we so earnestly contend for; which I solemnly here declare (as I did before in this Discourse) to be my only aim and intention; and in an humble way to follow the footsteps of your lordship, who is so bright an ornament and support of them. That this great city may flourish under your auspicious conduct, and never want a magistrate of your steady principles to guide and govern it, is the hearty prayer of, my lord, your lordship's most humble servant,

HENRY SACHEVERELL."

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2 COR. xi. 26.

"In Perils among false Brethren."

"Among all the most dreadful plots that ever threatened this Church and Kingdom, the dismal tragedy contrived as this day to be executed on both, may justly claim the horrible precedence, and consequently the highest expressions of our gratitude for so astonishing and miraculous a deliverance from it. For whether we consider the black depth of its subtle contrivance, the destructive extent, and sanguinary consequences of it, or its surprizing and unaccountable discovery, we must confess, that nothing but the all-powerful and gracious hand of God, interposing against the utter subversion of our nation and religion, could have prevented such a fatal Conspiracy: a Conspiracy! so full of the most unheard-of malice, most insatiable cruelty, most diabolical revenge, as only could be hatched in the cabinet-council of Hell, and brought forth in a conclave of Romish Jesuits! Now, though the history of this unparalleled mystery of iniquity was designed against us at such a distance of time, and the fact so evidently acknowledged, that the Papists themselves are so far from denying, that they extol it with the highest panegyricks; so that there needs neither proof of the one, nor repetition of the other: yet doubtless it is as much our duty, as interest, to keep up the annual celebration of this never-to-be-forgotten festival. For that the very face and shadow of our Church and Constitution is yet surviving; that this good and pious relict of the royal family sits now happily upon the throne of her great ancestors; that our hierarchy and nobility was not finally extirpated and cut off; that our country was not made an Aceldama, a field of blood, and a receptacle of usurping robbers; that we yet, without slavery, superstition, or idolatry, enjoy the benefit of our excellent laws, and most holy profession undefiled: in a word, that God has yet vouchsafed us this opportunity of coming into his presence, to acknowledge these inestimable blessings, is owing to his mercy so signally shewn to us, in disappointing the barbarous Massacre intended this day. A day! which ought to stand for ever in the English Kalendar, as an eternal æra, at the one end, as the 30th day of January at the other, for indelible monuments of the irreconcilable rage, and blood-thirstiness of both the popish, and fanatic enemies of our Church and Government! For these are equally such treacherous False Brethren, from whom we must always expect the utmost perils, and against whom we can never sufficiently arm ourselves with the greatest caution and security. These two days, indeed, are but one united proof, and visible testimonial of the same dangerous, and rebellious principles, these confederates in iniquity maintain: and as the one is but a thanksgiving for our deliverance from what the first projected; so is the other an humiliation, for what God permitted the latter, by their help and direction, to put in execution. I think therefore the best way of acknowledging these great mercies, and judgments of God, and acquitting both solemnities in a proper way, is by so justly considering our circumstances with respect to each side, as to guard against their malicious and factious designs for the future: that we may never trust either, to need a second deliverance from those villainous enterprizes, they will never cease to put in practice, whenever they see an opportunity of doing it with security.

"Now as persecution, and affliction, were the distinguishing badges of the Messiah, who was a man of sorrows, and acquainted with grief; so to convince his disciples, that his kingdom was not of this world, he bequeathed the same sad legacy to them, to share the character, as well as imitate the example, of their dying Lord and Master. With unshaken courage, and resolution, to take up his bloody cross, and follow the great Leader of their Salvation: to march with a cheerful magnanimity through all the powers of darkness, looking unto Jesus the Author and Finisher of their Faith, who for the joy that was set before him, endured the cross, despising the shame, and is set down at the right-hand of the throne of God. Thus was his Church to expect no better treatment than her great Founder and Original, to pass through the same fiery trial, to be made perfect through sufferings, to be militant here, in order to be triumphant hereafter; and like him, to be crowned with thorns in this world, to obtain a crown of glory in the next. Not only to encounter the open fury and violence of her professed and inveterate enemies; but (which was the bitterest part of her sufferings) like her Saviour, to be betrayed, and perfidiously given up by her own false-hearted and insidious Apostles.

"As the histories of the Church in all ages are as it were but one continued ratification of this melancholy truth, made up of so many mournful narratives of the unhappy lives, and disastrous deaths of saints, martyrs, and confessors, who bravely sealed the faith with their blood; so it is exemplified in no one instance more than in that primitive, and heroic champion of Christianity, the Author of this Epistle. Wherein, for the wonder, and emulation of posterity, he has recorded a long and frightful catalogue of those astonishing calamities he had underwent in the propagation of the Gospel. Such ample satisfaction did the pious labours of the convert make for the wicked persecution of the Jew, when, by a miraculous turn of Providence, the greatest sinner was changed into the devoutest saint, and the most zealous bigot against, into the most resolute sufferer for, religion. Yet however this great Apostle might have attained so extraordinary a degree of merit, as to outshine all that noble army of martyrs which adorn the bloody kalendar of the Church; nay, as he expresses it, to come never a whit short of the greatest Apostles, and as it were to vie characters with the very chosen of the Son of God; does it not seem a little to carry the air of ostentation, and vain-glory, thus to claim the pre-eminence and supremacy, and to boast himself in that pompous shew of services that he hath done for God and the Church? But we shall easily reconcile the Apostle and the orator, and find no imputation upon his modesty, if we consider the occasion of it. He had (as he informs us) with much pains and expence, planted Christianity in Corinth, where he had no sooner, by a miraculous ministry, established it, but several false apostles and seducers were, in his absence, crept into the Church, to vitiate and corrupt his new proselytes, under pretence of more purity and holiness, (like our modern Sectarists) to raise a schism amongst them, and to draw them off from the opinion they had of St. Paul; by ridiculing him for his person and address, as a little unedifying, ungifted preacher, of a weak bodily presence, and contemptible speech; thus wounding the ministry through the sides of the minister. Such slights and provocations certainly were a sufficient ground for the Apostle to insist upon his character, lest the Gospel should suffer by it: and with authority to rebuke the ingratitude of the Corinthians, and vindicate his dignity, and transcendent excellencies, against the base lies, and calumnies, cast upon him by such 'false apostles, deceitful workers, transforming themselves into the Apostles of Christ, 'like their true father the Devil, transforming 'himself into an angel of light.' With what justice then might he here stand upon the comparison, when thus vilely run down, by such wretched, empty, hypocritical sophisters? To appeal to his spiritual gifts, and revelations, and sufferings, in competition with such impudent, boasting, self-conceited pretenders, was the lowest act of humility, and good-nature; to condescend to dispute with such as ought to be answered, not with arguments, but anathemas! Yet behold the singular modesty of this great Apostle! He cannot enter upon his own justification, without much reluctance, and a long apology to introduce it. "I am become a fool in glorying (says he,) but you have compelled me to it. I speak as concerning reproach, as though we had been weak: Howbeit, wherein any is bold, I speak foolishly, I am bold also. Are they Hebrews? so am I! Are they Israelites? so am I! Are they the seed of Abraham? so am I! Are they ministers of Christ? I speak as a fool, I am more. In labours more abundant, in stripes above measure, in prisons more frequent, in deaths often; of the Jews five times received I forty stripes, save one. Thrice was I beaten with rods, once was I stoned, thrice I suffered shipwreck, a night and a day have I been in the deep. In journeyings often, in perils of waters, in perils of robbers, in perils by my own countrymen, in perils by the heathen, in perils in the city, in perils in the wilderness, in perils in the sea, in perils amongst False Brethren." In this rhetorical abridgment of the sufferings, and dangers of his life, there is a very observable gradation; the Apostle still rises in his calamities, and puts this last as the highest perfection of his misery, as that which made the deepest impression upon his passions, and what he bore with the greatest resentment and difficulty. The many severe pains, and tortures inflicted on his body, were nothing to this; nay, the good nature, and mercy of highwaymen, and Pagans, and even the devouring bosom of the deep, were to be preferred before, and sooner (it seems) to be trusted to, than the more certainly destructive,

and fallacious bosom of a treacherous False Brother.

"I shall take the expression in its full latitude, without confining it to the express design of the place; though it were very obvious to draw a parallel here, betwixt the sad circumstances of the Church of Corinth formerly, and of the Church of England at present; wherein her Holy Communion has been rent, and divided by factious, and schismatical impostors; her pure doctrine has been corrupted, and defiled; her primitive worship, and discipline prophaned, and abused; her sacred orders denied and vilified; her priests and professors (like St. Paul) calumniated, misrepresented, and ridiculed; her altars and sacraments prostituted to Hypocrites, Deists, Socinians, and Atheists; and this done, I wish I could not say, without discouragement, I am sure with impunity, not only by our professed enemies, but which is worse, by our pretended friends, and False Brethren. But to proceed to the matter before us: In my Discourse upon these words I shall endeavour,

"I. First, To shew in what sense, and upon what accounts men may be denominated False Brethren.

"II. Secondly, I will lay before you the great peril, and mischief of such, both in Church and State.

"III. Thirdly, I will set forth the heinous malignity, enormous guilt, and folly of this prodigious sin.

"IV. Lastly, As a consequence from the whole, I will undertake to evince what mighty reason we have at all times, and more especially at present, to stick firmly to the principles both of our Church and Constitution; and how much it concerns us to beware of all those False Brethren, that desert, or betray them.

"And first, I will shew you in what sense, and upon what accounts men may be denominated False Brethren. In order to which it will be necessary to state the full extent of the nature of False Brotherhood.

"This term ψευδαδελφία being of a relative signification, must respect men as considered under all social cases, or as they are placed under such regards and circumstances, as in duty oblige them both to think, speak, and act, with truth and integrity, correspondent to their inward principles, and outward professions. And wherein they are found deviating wilfully from either, by an unreasonable alteration of judgment, by any tacit mental reserve, or equivocation, upon any indirect ends, or designs, or guiding their expressions and actions contrary to these stated rules, are guilty of falshood, both in conscience and practice, of a breach of that veracity, justice and trust that they owe to God, themselves, and the world, and are properly what are styled in the text False Brethren. For whereas every man that either believes, speaks, or acts rationally, must be supposed to have some standing ground, and measure of judgment, settled upon some grand primitive maxims of truth, both speculative and practical, whether founded upon revelation, reason, or honour, which are what we call any man's principles, either in religion, society, or friendship: If these fundamental axioms have with true deliberation been sifted, and weighed, not only as to their intrinsic nature, and goodness, but as to their outward tendency, and consequences, they must appear, though not perhaps as infallible in themselves, yet with respect to the person so considering them, as demonstrative truths, as the light, and oracles of God, and reason, set up in his breast; by which he is always obliged to direct and govern his thoughts, resolutions, and actions; and which if he swerves from, disowns, or betrays upon any sinister motive, whatsoever (though after this nice search they should prove erroneous,) involve the man in a very heinous sin, treacherously acting against his judgment, and giving the lie both to his faith, his reason, and his knowledge. This matter being thus briefly premised, it is evident, that with regard to the several objects it is conversant about, men may in three respects be termed guilty of False Brotherhood.

"1. First, With relation to God, the Church, or Religion, in which they hold faith, or communion.

"2. Secondly, With relation to the State, Government, or Society, of which they are members.

"3. Thirdly, With relation to those private persons, with whom they have either friendship, correspondence, or dealing.

"1. And first, He is a False Brother, with relation to God, Religion, or the Church in which he holds communion, that believes, maintains, or propagates any false, or heterodox tenet, or doctrine repugnant to the express declaration of Scripture, and the decrees, or sense of the Church, and antiquity thereupon. For as in the first alone are contained the essential points, and Articles of our most holy Faith; so the primitive expositions, decisions, and practice of the ancient writers of the pure and uncorrupted ages of Christianity, must certainly be acknowledged the best, and most authentic comments upon their meaning. In opposition to which, if any upstart novelist, or self-conceited enthusiast, out of pride, as setting himself above these genuine oracles of truth; or out of ingnorance, as being unacquainted with the learning, and records of antiquity; or out of perverseness, scorning to submit his understanding to the dictates, or better reason of others; or out of ambition and vain-glory, as affecting to be the head, and leader of some new sect, or party; (all, or either of which have, and will be found for ever the parents of Heresy) and should break in upon this sacred *depositum* of the Church; and should attempt blasphemously to corrupt that inviolable fountain of truth, with erroneous conjectures, and vain philosophical systems; to profane and degrade the holy mysteries of religion, by absurd interpretations, and impudent reasonings; should we stick to call such

a rebel to God, and traitor to his Church, a False Brother? If a man should dare not only to revive, but to justify any execrable exploded Heresies, as those of Arius, and Nestorius, denying the hypostatical union, or the eternity of the Son of God; or should affirm that he was God in man, or that the Godhead was only locally in his manhood, as God was in the cloud; or that should presume to evacuate the great sanction of the Gospel, the eternity of hell-torments; or expound any of the Articles of our faith, in such a loose and vagrant way, as may suit them as well to a Mahometan's as a Christian's Creed; and to lay open all those sacred boundaries of the Church, to let in all sectaries, and schismatics, of whatsoever wild, romantic, or enthusiastic notions, so as to make the house of God, not only a den of thieves, but a receptacle of legions of devils: should we cover such a false apostle under the sacred umbrage of a true Church-man? In short, whosoever presumes to recede the least tittle from the express Word of God, or to explain the great credenda of our faith in new-fangled terms of modern philosophy, must publish a new Gospel, un-god his Saviour, and destroy his revelation; and by unsettling the universal, received doctrine of the Church, give up Christianity into scepticism, and atheism; and to speak the best of his character, is false both to his God, and his religion, and shall be called hereafter, the least in the kingdom of heaven, how great soever he may be in the kingdoms here below. And as a man may thus betray the doctrine of his Church, so he is no less false to his interest, that gives up any point of her discipline, and worship. These are the exterior fences to guard the internals of religion, without which they are left naked, without beauty, order or defence. Should any man, out of ignorance, or prejudice, to the ancient rights, and essential constitution, of the Catholic Church, affirm, That the divine apostolical institution of Episcopacy, is a novel doctrine, not sufficiently warranted by Scripture, and that it is indifferent whether the Church is governed by bishops, or presbyters; is not such an one an apostate from his own orders? Let the Christian world be judge, who best deserve the name of Churchmen, those that strictly defend, and maintain the Catholic doctrine, upon which the Church, as a society, is founded, or those who would barter them for a mungrel-union of all sects? Those who zealously support her mission, which only can support her, or those who would destroy it, to take in schismatical presbyters without episcopal ordination, which would un-church the very Church, and annihilate her constitution? Is this the spirit and doctrine of our holy mother? To assert separation from her communion, to be no schism; or if it was, that schism is no damnable sin; that occasional conformity is no hypocrisy, but rather for the benefit of the Church; that any one may be an occasional conformist with schismatics, and yet not guilty of schism; that a Christian may serve God in any way or congregation of worship, as well by extemporary prayers, as by a prescribed form, and liturgy; that conformity to the Church, and ecclesiastical authority, are no parts of morality, and a good life, which are only necessary to salvation: that the orders and ceremonies of the Church, are only carnal, arbitrary obediences, to be dispensed with as men please, both by clergy and laity; that the censures and excommunications of the Church, are mere *bruta fulmina;* canonical obedience, and absolution, spiritual tyranny, and usurpation; and in a word, that the whole body of the worship, and discipline of the Church of England, is nothing else but priestcraft, and Popery in masquerade. If upon all occasions to comply with the Dissenters both in public and private affairs, as persons of tender consciences and piety, to promote their interests in elections, to sneak to them for places and preferment, to defend Toleration, and liberty of conscience, and under the pretence of moderation, to excuse their separation, and lay the fault upon the true sons of the Church, for carrying matters too high; if to court the Fanatics in private, and to hear them with patience, if not approbation, rail at and blaspheme the Church, and upon occasion to justify the king's murder; if to flatter both the dead and the living in their vices, and to tell the world, that if they have wit and money enough, they need no repentance, and that only fools and beggars can be damned; if these, I say, are the modish, and fashionable criterions of a true Church-man, God deliver us all from such False Brethren!!

"There is another sort of them who are for a neutrality in religion, who really are of none, but are a secret sort of reserved Atheists, who always pretend to be of the Church, join in the herd, and will sometimes frequent our public communion, as long as the government appears on our side; but if any thing is to be got by it, can with as safe a conscience slide privately into a conventicle and look as demure as the slyest saint amongst them. They are equally of all, and of no communion, they are the Gallios that care for none of these things; they tell us they are for the religion established by law, but no longer than it is so; they can see neither sin nor danger in that ecclesiatical bugbear, as they call schism, yet talk very loud about union, comprehension and moderation; by all which canting expressions, they mean nothing but getting money and preferment, by holding in with persons of all parties and characters, halting betwixt the diversity of opinions, and reconciling God and Belial for gain. To these we may add those who either out of fear, or complaisance, can tamely, and without vindication, hear their God and religion blasphemed and abused. But there is another sort of False Brethren, who set up for a greater perfection of piety than their neighbours, who, like their originals, the Pharisees in the Gospel, are always pleading their merits before God, and the world, with an ostentation of

sanctity, in comparison with their profane brethren, with a 'Stand off, for I am holier than thou!' These are the saints that under the pretence of conscience, shall commit the most abominable impieties, and justify murder, sacrilege and rebellion, by texts of Scripture. There are yet another sort of False Brethren, of a quite opposite character to these, who wish well to the Church of England, and really believe her constitution in doctrine, discipline and worship, the best and purest in the Christian world; and when either their tongues, hands, or purses are wanting in her defence, are ready to sacrifice their persons and estates in her vindication. These indeed are noble qualifications, and it is a pity so good a character should want any thing to complete it. And to turn the words of our blessed Saviour to the rich man, 'yet one thing thou lackest,' thy zeal is to be shewn in, as well as for the communion of the Church, in obeying her precepts, as well as defending her rights. In all these cases there is a serious and deliberate act of treachery against conscience and conviction, a base forfeiture of that spiritual allegiance we owe to God, and our Church, as a sacred body, and fraternity, that ought to preserve inviolable unity, professing one faith, one baptism, one God, and Saviour of us all.

"But, secondly, men may be denominated False Brethren, with relation to the state, government, or society of which they are members. The constitutions of most governments differing according to their several frames, and laws, upon which they are built and founded, it is impossible to lay down any one universal rule, as the scheme and measure of obedience, that may square to every one of them. Only this maxim in general I presume may be established, for the safety, tranquillity, and support of all governments, that no innovation whatsoever should be allowed in the fundamental constitution of any state, without a very pressing, nay, unavoidable necessity for it: and whosoever singly or in a private capacity should attempt it, is guilty of the highest misdemeanor, and is an enemy to that politic body of which he is a member. To apply this maxim to our government, in which the truth of it will very evidently appear; our constitution both in Church and State, has been so admirably contrived, with that wisdom, weight, and sagacity, and the temper and genius of each so exactly suited, and modelled to the mutual support and assistance of one another, that it is hard to say, whether the Doctrines of the Church of England contribute more to authorise and inforce our civil laws, or our laws to maintain and defend the doctrines of our Church. The natures of both are so nicely correspondent, and so happily intermixt, that it is almost impossible to offer a violation to the one, without breaking in upon the body of the other. So that in all those cases before-mentioned, whosoever presumes to innovate, alter or misrepresent any point in the Articles of the Faith of our Church ought to be arraigned as a traitor to our state; heterodoxy in the doctrines of the one naturally producing, and almost necessarily inferring rebellion, and high-treason, in the other; and consequently a crime that concerns the civil magistrate, as much to punish, and restrain, as the ecclesiastical. However this assertion at first view may look like an high flown paradox, the proof of it will fully appear in a few instances. The grand security of our government, and the very pillar upon which it stands, is founded upon the steady belief of the subject's obligation to an absolute, and unconditional obedience to the supreme power in all things lawful, and the utter illegality of Resistance upon any pretence whatsoever. But this fundamental doctrine, notwithstanding its divine sanction in the express command of God in Scripture, and without which it is impossible any government of any kind or denomination in the world should subsist with safety, and which has been so long the honourable and distinguishing characteristic of our Church, is now, it seems, quite exploded, and ridiculed out of countenance, as an unfashionable, superannuated, nay (which is more wonderful) as a dangerous tenet, utterly inconsistent with the right, liberty and property, of the People; who, as our new preachers, and new politicians teach us, (I suppose by a new and unheard of Gospel, as well as laws) have, in contradiction to both, the power invested in them, the fountain and original of it, to cancel their allegiance at pleasure, and call their sovereign to account for high treason against his supreme subjects forsooth; nay to dethrone and murder him for a criminal, as they did the Royal Martyr by a justiciary sentence. And, what is most incredible, presume to make their court to their prince, by maintaining such antimonarchical schemes. But God be thanked! neither the constitution of our Church or State, is so far altered, but that by the laws of both, (still in force, and which I hope, for ever will be) these damnable positions let them come either from Rome or Geneva from the pulpit, or the press, are condemned for rebellion, and high-treason. Our adversaries think they effectually stop our mouths and have us sure and unanswerable on this point, when they urge the Revolution of this day in their defence. But certainly they are the greatest enemies of that, and his late majesty, and the most ungrateful for the deliverance, who endeavour to cast such black and odious colours upon both. How often must they be told, that the * king himself solemnly

* His Highness declares, in opposition to those who give out, that we do intend to conquer and enslave these nations, that we have thought fit to add a few words to our Declaration; "it is not to be imagined, that either those who have invited us, or those who are already come to assist us, can join in a wicked attempt of conquest, to make void their own lawful titles to their honours, estates, and interests." See the Prince of Orange's Decla

disclaimed the least imputation of Resistance in his Declaration; and that the parliament declared, that they set the crown on his head, upon no other title, but that of the vacancy of the throne? And did they not unanimously condemn to the flames (as it justly deserved) that infamous Libel, that would have pleaded the title of conquest, by which Resistance was supposed? So tender were they of the regal rights, and so averse to infringe the least tittle of our constitution! We see how ready these incendiaries are to take the least umbrage, to charge their own cursed tenets on the Church of England, to derive their guilt upon it, and quit scores with it for their iniquity! Thus do they endeavour to draw comparisons, and to justify the horrid actions and principles of Forty-One, which have been of late years, to the scandal of our Church, and nation, so publicly defended, not only by the agents and writers of the Republican faction, but by some that have the confidence to style themselves sons, and Presbyters of the Church of England; who in open defiance of the most peremptory declarations of God in Scripture, (never to be evaded by any shifts or misrepresentations) and the universal doctrine, and expositions of the Catholic Church upon it in all ages, with the express testimony, and concurrence of our Church, from its Reformation down to the present times, corroborated with the sense of our legislature, so unexceptionably confirmed in our laws, dare, in despite and contempt of all this evidence, manifestly defend the Resistance of the supreme power, under a new-fangled notion of self-defence; the only instance they shew of shame, that they dare not yet maintain rebellion by its proper name. Yet, if those silly pretences, and weak excuses for it alledged, carry any strength or reason in them at all, they will equally serve to justify all the rebellions that ever were or can be committed in the world. Now as the Republicans copy after the Papists, in most of their doctrines and practices, I would fain know in this where the difference lies, betwixt the power granted to (as it is supposed originally invested, but from what commission God knows, in) the people, to judge and dethrone their sovereigns, for any cause they think fit; or a no less usurped power of the Pope, to solve the people from their allegiance, and dispose of sceptres and diadems to his favourites, whenever he thinks it his interest to pluck them from his enemies' heads. Comparisons are generally odious; but a learned Bishop of our kingdom, whose aversion to Popery,* I hope, is not doubted, I mean the right reverend the lord bishop of Sarum, has been bold judiciously to determine, even on the Papists' side in this case, that if such a deposing power is to be intrusted in mortals hands, less inconveniences will ensue in placing it in one, than in many; though God forbid it ever should be lodged in any other than that of God himself, the original of all power, from whom it proceeds, and to whom it must return; the King of Kings, Lord of Lords, and only Ruler of Princes. So that these romantic wild notions will carry us into something worse (if it is possible) than Popery itself; more fatal to the rights and interests of the crown, and the welfare and tranquillity of our constitution, which can never be safe under such precarious dependencies and despotic imaginations. A prince indeed in another sense, will be the breath of his subjects' nostrils, to be blown in, or out, at their caprice and pleasure, and a worse vassal than even the meanest of his guards. Such villainous and seditious principles as these, demand a confutation from that government they so insolently threaten and arraign, and which are only proper to be answered by that sword they would make our princes bear in vain, by the so-long-called for censure of an Ecclesiastical Synod, and the correction of a provoked and affronted legislature; to whose strict justice, and undeserved mercy, I commit both them and their authors. Only give me leave to dismiss them with a remark of the pious and learned bishop Andrews, upon some of their False Brethren in his time.* "What (says that good prelate) is now become of these words of God, Touch not mine anointed? Are we not fallen into strange times, that men dare thus print and publish, yea, even preach and proclaim their sins; even those sinful and shameless positions, to the eyes and ears of the whole world? whereby God's anointed are endangered, men's souls are poisoned, Christian religion is blasphemed as a murderer of her own kings; God in his charge is openly contradicted, and men made believe, they shall go to heaven in breaking God's commandments." What could have been spoken with a more prophetical spirit, of these filthy dreamers, these presumptuous and self-willed men, despisers of dominion, and government, who are not afraid to speak evil of dignities, who wrest the word of God to their own, and their deluded people's perdition, and think to consecrate even the worst of sins, with what is almost analogous to the blasphemy against

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ration. *Former Edition.* The Prince's Declaration was dated October 10th, 1688. The clause cited above is in his "Additional Declaration," dated Oct. 24th.

* Less disorder may be apprehended from the pretensions of the Roman bishops, than from these maxims, that put the power of judging and controlling the magistrate in the people's hands, which opens a door to endless confusions, and indeed, sets every private person upon the throne, and introduceth an anarchy, which will never admit of order and remedy; whereas, those who have but one pretender over them, could more easily deal with him, and more vigorously resist him. [Vindication of the Church of Scotland. Printed at Glasgow, 1673. p. 68, 6.] *Former Edition.*

* "Sermon 3, on the Conspiracy of the Gowries, preached before the King at Holdenberg, Aug. 5, 1610, p. 808." *Former Edition.*

the Holy Ghost! These False Brethren in our government, do not singly, and in private spread their poison, but (what is lamentable to be spoken) are suffered to combine into bodies and seminaries, wherein Atheism, Deism, Tritheism, Socinianism, with all the hellish principles of Fanaticism, Regicide, and Anarchy, are openly professed and taught, to corrupt and debauch the youth of the nation, in all parts of it, down to posterity, to the present reproach, and future extirpation of our laws and religion. Certainly the Toleration was never intended to indulge and cherish such monsters, and vipers in our bosom, that scatter their pestilence at noon-day, and will rend, distract, and confound, the firmest and best settled constitution in the world. In short, as the English government can never be secure on any other principles, but strictly those of the Church of England, so I will be bold to say, where any part of it is trusted in persons of any other notions, they must be false to themselves, if they are true to their trusts; or if they are true to their opinions and interests, must betray that government they are enemies to upon principle. Indeed, we must do them that justice, to confess, that since the Sectarists have found out a way (which their forefathers, God knows, as wicked as they were, would have abhorred) to swallow not only oaths, but sacraments, to qualify themselves to get into places and preferments; these sanctified hypocrites, can put on a shew of loyalty, and seem tolerably easy in the government, if they can engross the honours and profits of it: But let her majesty reach out her little finger to touch their loins, and these sworn adversaries to Passive Obedience, and the royal family, shall fret themselves, and curse the queen, and their God, and shall look upwards. And so much for our political False Brethren, till I come to speak with them again by and bye. I proceed,

"3. In the third place, to a more inferior species of them, that act in a lower sphere, namely, those who in their private capacities, are false either in their friendship, correspondence, or dealing: But these sins of unfaithfulness, as the Psalmist calls them, being of so copious, and extensive a nature, and respecting the private concerns of human life, I shall only trouble you with enumerating some of the general instances of them: Such as are, betraying our friend in his secrets, deserting him in his misfortunes, in not defending his reputation when falsly accused, in an obsequious compliance with him in any indirect, or dishonourable measures, in a nauseous flattery of his follies, or vices, in permitting him in any error, without admonition, and in giving him wrong advice, and not leading him out of it. Such are also, with regard to our neighbour, the concealing, or misrepresenting any truth that he is concerned to know, playing upon his faith with doubtful and ambiguous insinuations, with double equivocations, and dissimulatory expressions, an actual breach of word, promise, or profession, clandestine undermining, by circumvention, fraud, or craft, backbiting, and secretly slandering, propagating scandal, and bearing false witness, and partaking several ways in his sins; which are all the characteristics of an insidious, treacherous, and false-hearted knave. But these vices being of a private consideration, I hasten to the next general head proposed, namely,

"II. Secondly, To lay before you the great peril, and mischiefs of these False Brethren in Church and State; which I shall endeavour to do, by proving that they weaken, undermine, and betray in themselves, and encourage, and put it in the power of our professed enemies, to overturn, and destroy the constitution and establishment of both.

"1. And first, as to the Church. But here it is very necessary to premise, that by the Church of England, we are to understand the true genuine notion of it, as it stands contradistinguished in its established doctrine, discipline, and worship, from all other churches, and schismatics, who would obtrude upon us a wild, negative idea of a National Church, so as to incorporate themselves into the body, as true members of it; whereas it is evident that this latitudinarian, heterogeneous mixture of all persons of what different faith soever, uniting in Protestancy, (which is but one single note of the Church of England) would render it the most absurd, contradictory, and self-inconsistent body in the world. This spurious and villainous notion, which will take in Jews, Quakers, Mahometans, and any thing as well as Christians, as ridiculously incongruous as it is, may be first observed, as one of those prime, popular engines, our False Brethren have made use of to undermine the very essential constitution of our Church; which as it stands guarded with its own sacred fences, with her only true sons in her bosom, may defy all the malice of the devil and her enemies, to prevail against her. But such is her hard fortune, her worst adversaries must be let into her bowels, under the holy umbrage of sons, who neither believe her faith, own her mission, submit to her discipline, or comply with her liturgy. And to admit this religious Trojan horse, big with arms and ruin, into our holy city, the straight gate must be laid quite open, her walls and inclosures pulled down, and an high road made in upon her communion, and this pure spouse of Christ prostituted to more adulterers than the scarlet whore in the Revelations. Her articles must be taught the confusion of all senses, nations, and languages to render her a Babel, and desolation. This was indeed the ready way to fill the House of God, but with what? With Pagan beasts, instead of Christian sacrifices, with such unhallowed, loathsome and detestable guests, as would have driven out the Holy Spirit of God with indignation. This pious design of making our house of prayer a den of thieves, of reforming our Church into a chaos, is well known to have been attempted several times in this kingdom, and lately within our memory

things seemed to favour it, but that
Providence, which so happily interposed
against the ruin of our Church, and blasted
he long projected scheme of these ecclesias-
al Achitophels. A scheme so monstrous, so
antic, and absurd, that it is hard to say,
ther it had more of villainy, or folly in it,
which even the Sectarists of all sorts (who
ot be satisfied with any thing less than
tigaty) exploded, and laughed at, as ridi-
s, and impracticable. It was doubtless
rise way to exemplify our brotherly love,
d charity for the souls of men, to put both
em, and ourselves into a gulph of perdition,
throwing up the essentials of our faith, and
e uniformity of our worship. But since
model of an universal liberty, and coali-
failed, and these False Brethren could
carry the Conventicle into the Church,
y are now resolved to bring the Church
into the Conventicle, which will more plausi-
bly, and slily effect her ruin. What could not
be gained by comprehension, and toleration,
must be brought about by moderation, and oc-
casional conformity; that is, what they could
not do by open violence, they will not fail by
secret treachery to accomplish. If the Church
cannot be pulled down, it may be blown up;
and no matter with these men how it is de-
stroyed, so that it is destroyed. Now let us,
I beseech you in the name of God, fairly con-
sider what must be the consequence of this
scandalous fluctuation, and trimming betwixt
the Church and Dissenters, both in conscience,
and prudence. Does not this innovating in,
giving up, or receding from, any one point, or
article in our faith, violate, and affect the
whole frame, and body of it? Can we either
add to, or diminish from, the least jot of our
religion? Are we to take its constitution as
our Saviour and his Apostles delivered it down
to us; or have we authority to curtail, mangle,
or alter it, to suit it to the pride, humours,
caprice, and qualmsick stomachs, of obstinate,
moody, wayward, and self-conceited hypo-
crites, and enthusiasts? Will not such a base
and time-serving compliance give the enemies
of our Church an occasion of blaspheming her
as weak, and inconstant? Will it not argue
the illegality of her ordinances and laws, or
that they were too rigid, and wanted an abate-
ment? Will not this harden, encourage, nay
justify the Dissenters in their opinion of their
separation, when they see such large allow-
ances, and concessions made in its favour?
What dishonourable and unworthy opinions
must they entertain of the priests of that
Church, who can sacrifice their most solemn
declarations and oaths to complaisance and
preferment? What would be the end of all
this, but to establish Heresy and Erastianism
upon the ruins of our faith and discipline?
Would not this spiritual legerdemain, this fal-
lacious tricking, and double-dealing, eradicate
all the principles of truth, and honesty, or
piety out of men's minds, make them uncon-
cerned whether there is any, or no religion,
run them into an univer
fidelity, and make them
For when they had tur
and were grown giddy
would either give up th
lief of all things, or res
ments in the authority
that can delude them w
tences of an infallible gu
Brethren, as the Jews d
crucify his Church bet
they committed that ex
a pretended fear lest the
and take away their pla
by that very fact they
selves: so these men,
lest the modern Roman
stroy our Church, are w
pretend to avoid, and
keeping out Popery, ar
bringing in that very
dom, with which they
fully endeavour to attain
land, the greatest bulw
guard against Popery
Though it were highly
excellent laws made for
curity, were at present
cution; for the Roman-
missionaries that swarm
as it were in defiance a
were never more busy in
their superstition, and id
and debauching her
every corner of our stre

2. "Thus we see
False Brethren are to ou
great and considerable
constitution, that the su
ment depends upon its
fects that must strike at
state; innovations in eit
version of their laws,
establishment, and cons
and confusion. But to
more home to the poin
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treacherous, and uncer
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eyes, and our judgmen

lieve, that the same causes should not produce the same effects, and that the same latitudinarian and republican notions should not bring forth the same rebellious and pernicious consequences. They are pleased now to soften their lewd principles, and cover their dangerous tenets with the name of speculative opinions; but what fatal practices they have created, and whether these seditious thoughts will not again exemplify themselves in the same bloody actions, we shall be convinced, to our sorrow, if we do not apprehend. That the old leaven of their forefathers is still working in their present generation, and that this traditional poison still remains in this brood of vipers, to sting us to death, is sufficiently visible, from the dangerous encroachments they now make upon our government, and the treasonable reflections they have published on her majesty, God bless her! whose hereditary right to the throne, they have had the impudence to deny, and cancel, to make her a creature of their own power; and that by the same principles they placed a crown upon her, they tell us, they (that is the mob) may re-assume it at their pleasure. Nay, now they have advanced themselves from the religious liberty our gracious sovereign has indulged them, to claim a civil right, as they term it, and to justle the Church out of her establishment, by hoisting their Toleration into its place; and to convince us what alone will satisfy them, insolently demand the repeal of the Corporation and Test acts, as an ecclesiastical usurpation, which indeed under her majesty (whom God long preserve for its comfort and support!) is the only security the Church has to depend upon. And which they have so far eluded by their abominable hypocrisy, as to have undermined her foundation, and endanger the government, by filling it with its professed enemies. These charges are so flagrant, and undeniable, that a man must be very weak, or something worse, that thinks, or pretends, that Dissenters are to be gained, or won over by any other grants and indulgences than giving up our whole constitution: and he that recedes the least tittle from it, to satisfy, or ingratiate with these clamorous, insatiable and church-devouring malignants, knows not what spirit they are of, or he ought to shew who is a true member of our Church. Have they not ever since their first unhappy plantation in this kingdom, by the intercession of that false son of the Church, bishop Grindall, always improved, and rise upon their demands in the permission of the government? insomuch that queen Elizabeth, that was deluded by that perfidious prelate to the toleration of the Genevian discipline, found it such an headstrong and encroaching monster, that in eight years, she foresaw it would endanger the monarchy, as well as the hierarchy: and like a queen of true resolution, and pious zeal for both, pronounced, that 'such were the restless spirits of that factious people, that no quiet was to be expected from them, till they were utterly suppressed:' which like a prudent princess, she did by wholesome severities, that the crow for many years sat easy, and flourishing o her head. And had her successor, king Jame but followed her wise politics, his son had ne ver fallen a martyr to their fury, nor any o his unhappy offspring suffered those disastrou calamities, which made the royal family on continued sacrifice to their malice. And wha better could have been expected from mis creants, begot in rebellion, born in sedition, an nursed up in faction? I would not here b misunderstood, as if I intended to cast the leas invidious reflection upon that indulgence th government has condescended to give them which I am sure all those that wish well to ou Church are very ready to grant to conscience truly scrupulous; let them enjoy it in the ful limits the law has prescribed. But let then also move within their proper sphere, and no grow eccentric, and like comets that burst thei orb, threaten the ruin and downfall of ou Church and State. Indeed they tell us they have relinquished the principles, as well as th sins of their fore-fathers: if so, why do they not renounce their schism, and come sincerely into our Church? Why do they pelt her with more blasphemous libels, and scurrilous lampoons, than were ever published in Oliver's usurpation? Have they not lately villainously divided us with knavish distinctions of High and Low Churchmen? Are not the best characters they can give us, those of Papists, Jacobites, and Conspirators? And what do they mean by all this insidious cant, but by false insinuations, and raising groundless jealousies and fears, to embroil the public, and to bring it into that confusion they are suggesting upon us? Whether these men are not contriving, and plotting our utter ruin, and whether all those False Brethren, that fall in with these measures and designs, do not contribute basely to it, I leave every impartial man that wishes the welfare of our constitution to determine: and if we find this true in fact, what reason have we to think, but that the national sins are ripened up to a full maturity, to call down vengeance from Providence on a Church and kingdom, thus debauched in its principles, and corrupted in its manners, and instead of the true faith, discipline, and worship, given over to all licentiousness, both in opinion, and practice, to all sensuality, hypocrisy, lewdness, and Atheism? And now are we under no danger in these deplorable circumstances? Must we lull ourselves under this sad repose, and in such a stupid, lethargic security, embrace our ruin? When Elisha the great prophet of God was surrounded with an host of enemies, that sought for his life, his blind servant beheld not the peril his master was in, till his eyes were opened by miracle, and he found himself in the midst of horses and chariots of fire. I pray God we may be out of danger! but we may remember the king's person was voted to be so, at the same time that his murderers were conspiring his death. What I have thus freely spoken, I hope is as much without offence, as it proceeds

from a good intention, and a tender concern for her majesty's person, and government, and an hearty zeal for the honour and safety of our excellent Church and Constitution. I intreat your patience,

"III. Briefly to set forth the heinous malignity, enormous guilt, and folly of this prodigious sin of False Brotherhood.

"1. And first, With regard to God and religion. It is a most perfidious apostacy from, and reproach upon both. It is no less than renouncing our allegiance to our Almighty Sovereign, an open denial, and prostitution of our most holy faith and Church, upon which crime God has entailed so many dreadful threats, and anathemas. It is betraying our most solemn oaths, proving false to our sacred trust and commission, administering to, and indulging men in the most mortal sins, endangering both our own, and the salvation of that dear flock, for which Christ died, by exposing it to the corruptions of Heresy and Schism, the impostures of false apostles, and the deceit and malice of wolves in sheep's cloathing. It is deriving the highest blasphemy and dishonour upon the holy spirit of God, thus to prevaricate with his immutable oracles of truth, in wresting them to maintain the most diabolical falsehoods and errors, and making veracity itself the author and patronizer of lies. It is forsaking our baptismal covenant, basely deserting the glorious colours we are listed under, turning refugees from our Saviour, and adherents to his most abjured enemies. In a word, to accomplish any wretched secular design, to gratify their pride or ambition, to feed their lust or avarice, to wreak their spleen or revenge, out of envy or disappointment, for a little, paltry honour, money, or preferment: these False Brethren will renounce their creed, and read the Decalogue backward, be the very reverse of our Blessed Saviour (whom like their primitive pattern, they first sell, and then betray) fall down and worship the very devil himself for the riches and honours of this world.

"2. Secondly, in regard to the world. What a vast scandal, and offence must it give to all persons of piety, and integrity, to see men of character, and stations, thus shift and prevaricate with their principles, and starting from their religion upon any occasion of difficulty or trial, and like the disciples, flying from, and forsaking our Saviour, when his life lay at stake? To see men's opinions sit as loose about them as their garments, to put on, or off, for convenience? What can unwary persons conclude from such tergiversation, and hypocrisy, but that all religion is state-craft, and imposture? That all godliness is gain; and that the doctrines of the Church lie not so much in her articles, as her honours and revenues? Without doubt this modern latitude, and infamous double-dealing, as it can proceed from nothing but the rankest Atheism, so it must propagate it wheresoever it goes; and it is not to be questioned, but that the wonderful increase, and impudent appearance of all sects and heresies in this kingdom at present, beyond what was ever known in former ages, is chiefly to be attributed to it. But this crime is as pernicious to human society, as religion; for it destroys all common honesty, faith, and credit in the world, and in the place of it sets up an universal trade of cozenage, sharping, dissimulation, and downright knavery. For, what dependance can there be upon a man of no principles? What trust in equivocations, evasions, and lies? Nor indeed could any one be supposed so sottish, as to place the least confidence in these men, did they not bait their hook, and cover their treachery with the sacred and plausible pretences of friendship, whereby they are capable of doing much more mischief, than a barefaced and professed enemy. In what moving and lively colours does the holy Psalmist paint out the crafty insidiousness of such wilely Volpones?* "Wickedness (says he) is therein, deceit and guile go not out of their streets. For it is not an open enemy that has done me this dishonour, for then I could have borne it: neither was it mine adversary, that did magnify himself against me, for then peradventure I would have hid myself from him. But, it was even thou! my companion, my guide, and mine own familiar friend. We took sweet counsel together, and walked in the House of God as friends. There is no faithfulness in their mouths, their inward parts are very wickedness; their throats are open sepulchres, and their words are smoother than oil, yet be they very swords." Like Joab, they pretend to speak peaceably, and smite us mortally under the fifth rib.

"3. Thirdly, with regard to a man's self, it is hard to distinguish whether our False Brethren prove themselves guilty of more excessive knavery, or folly. For whatever these cunning, temporizing politicians may think, they will find, after all their shuffling, and compliance, that the plain road of truth, honesty, and integrity, is both the most prudent,

* Volpone was a nick-name of lord Godolphin. Swift in his 'Journal to Stella,' April 24, 1711, says of Sacheverell, "He hates the new ministry mortally, and they hate him, and pretend to despise him too. They will not allow him to have been the occasion of the late change, at least some of them will not, but my Lord Keeper owned it to me the other day."

"The famous trial of Dr. Sacheverell arose from a foolish passionate pique of the earl of Godolphin, whom this divine was supposed, in a Sermon, to have reflected on under the name of Volpone, as my lord Somers, a few months after, confessed to me; and at the same time, that he had earnestly and in vain endeavoured to dissuade the earl from that attempt." Memoirs relating to the Change in the Queen's Ministry. Swift's Works, vol. 6, p. 273, Edit. of 1808. As to the cause of the Trial (which is naturally and almost necessarily mentioned in many parts of Swift's writings) he says the same thing in the 26th Examiner.

as well as the safest way they can follow, and that the wisdom of this world is as much foolishness with men, as it is with God. For certainly there is no sin that so much disappoints its own ends as this does. Perhaps the man may obtain the present advantage he has in prospect, by relinquishing his old friends and principles; but is ever such a mercenary convert received heartily into the bosom of his former enemies? Or are they ever found so credulous and good natured, as to forgive, and believe such an apostate cordial and sincere, and fit to be trusted in any matter of weight or importance, who has betrayed his own party for the little, sordid lucre of a place or preferment? and is again ready to be retrograde, whenever the wind shall change and veer about? Such a False Brother may serve the present turn of his adversaries, who may seem, whilst they want the tool, to flatter and caress him; but let such a turn-coat rest assured, he shall meet with hypocrisy for hypocrisy; and since he is got upon the stage, shall act his part and be hissed off when he has done? Such a wise game do our projectors play, they barter and betray their friends, only to sell themselves slaves into the hands of their enemies, who shall treat them with more insolence, disdain, and tyranny, than honest men do with scorn and contempt, if they do not go the whole lengths of their party, stick at nothing, though never so impious and absurd, and run from one extreme to a quite contrary. Thus little, thus base, thus odious, thus contemptible, thus servile, nay thus execrable is the traitor and double dealer, in the sight not only of all honest men, but the most professed knaves, and hypocrites. Who cannot but have a tacit regard, and veneration for a man of steadiness and probity, that upon all occasions is true to himself, and his cause, is above the threats, as well as flatteries of this world, still trusting in his God, and his own integrity, and justice, despising his interest, or success, and is under all circumstances like that God, and religion he believes and serves, without variableness, or shadow of change, but is the same, to-day, to-morrow, and for ever? Farther, these False Brethren cannot be more odious to God and man, than they are to themselves, who are always a self-contradiction, full of confusion and perplexity, perpetually haunting themselves, the worst of demons, maintaining an irreconcilable war betwixt the outward and inward man, conformists in profession, half-conformists in practice, and non-conformists in judgment. Such a mixture of inconsistency and nonsense, that any one that has the least spark of conscience or reason, must renounce and detest. But this dismal effect has such a state of habitual hypocrisy, that it quite damps, and extinguishes both, quenches the holy spirit of God, and crucifies his Son afresh; and as it finds a man void of shame, generally without a miraculous conversion leaves him incapable of repentance, and both damns him here, and hereafter; and as he chose it in this world, appoints him in the next, his portion with hypocrites and unbelievers, with all liars that have their part in the lake which burns with fire and brimstone, with the grand-father of falshood, the devil and his angels. And so here we leave our False Brethren, in the company they always keep correspondence with.

"4. Now what should be the result of this long discourse, but that if we bear any true concern for the interest, honour, and safety of our Church and government, we ought steadfastly to adhere to those fundamental principles, upon which both are founded, and upon which their security, under God, alone depends; and consequently that it highly behoves us, cautiously to watch against, to mark, and avoid all those that thus treacherously desert them. And indeed it would be both for our advantage, as well as their credit, if such men would throw off the mask, entirely quit our Church, of which they are no true members, and not fraudulently eat her bread, and lay wait for her ruin, purloin her revenues, and ungratefully lift up their heels against her. For then we should be one fold under one shepherd, all those invidious distinctions that now distract and confound us lost, and we should be terrible like an army of banners to our enemies, who would never break in upon such an uniform, and well-compacted body. This indeed would be a true peace, and solid union, when we should all with one mind, and one mouth, glorify God, and not with a confused diversity of contradictious opinions, and inconsistent jargon of worship, which the God of peace, purity and order cannot but abhor. As it is a maxim in politics, that all governments are best supported by the same methods and counsels upon which they are founded; so it will appear undeniably true in its application to our constitution, which can be maintained by no other principles, but those on which it is built, and like their basis, the Gospel, if there is any violation, or breach made in any branch of it, it shakes and endangers the whole frame and body. These things, however little they may be represented by our adversaries, will be found of the most considerable consequence. Let us therefore, as we are unhappily sharers of St. Paul's misfortune, to have our Church in perils among False Brethren, follow his example and conduct in a parallel case. He tells us in his Epistle to the Galatians, c. ii. That he was obstructed, and pestered in his preaching the Gospel, by False Brethren, unawares brought in, who came privily to spy out his liberty, which he had in Christ Jesus, that they might bring him into bondage. To whom he gave place by subjection, no not for an hour, that the truth of the Gospel might continue with the Church. Doubtless this brave and bold resolution did the Apostle take by the peculiar command, and inspiration of the Holy Ghost, and yet if our Dissenters had lived in those times, they would have branded him as an intemperate, hot, furious zealot, that wanted to be sweetened, by the

gentle spirit of charity, and moderation, forsooth! Schism and faction are things of impudent and encroaching natures; they thrive upon concessions, take permission for power, and advance a toleration immediately into an establishment; and are therefore to be treated like growing mischiefs, or infectious plagues, kept at a distance, lest their deadly contagion spread. Let us therefore have no fellowship with these works of darkness, but rather reprove them. Let our superior pastors do their duty in thundering out their ecclesiastical anathemas, and let any power on earth dare reverse a sentence ratified in heaven. Let them discountenance all these seditious, lukewarm, almost-Christians, and promote men of probity, conscience, and courage; I say conscience and courage, for the one without the other is like faith without works, dead and insignificant. A Christian, and a coward, are such contradictions, as were never found in the Church militant; men of timorous and dastardly spirits, who are ashamed to own, or afraid to defend their principles, lest they should lose, or suffer by it, will prove very poor disciples of the cross! Such men (as an ingenious prelate wittily expresses it) are only honest by chance. Let us despise the sneaking, shuffling compliances of such as consult their safety, and not their innocence, and dare to be true in the worst of times, with this all-sustaining cordial comfort, that whatever enemies we gain, or friends we lose, we carry one within us, that can confront, vanquish, and counter-balance all. "Woe unto them that have a fearful heart, and to the faint hands, and to the sinner that goeth two manner of ways!" says the wise man, Eccles. ii. 12. And agreeable to him the Apostle in very sarcastic expressions, Jude 11, 12, 13, "Woe unto them that have gone in the way of Cain, and run greedily after the error of Balaam for reward, and perished in the gainsaying of Corah! These are spots in your feasts of charity, clouds without water, carried about of winds, trees whose fruits are withered, without fruit, twice dead, plucked up by the roots: raging waves of the sea, foaming out their own shame; wandering stars, to whom is reserved the blackness of darkness for ever." Let us, therefore, being well assured how much our cause deserves, and how much at present it requires our bravest resolutions, hold fast our integrity and religion, without wavering, and earnestly contend for the faith, which was once delivered unto the saints. "My brethren, be strong in the Lord, and in the power of his might. Put on the whole armour of God, that ye may be able to stand against the wiles of the devil. For we wrestle not only against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickednesses in high places. Wherefore take unto you the whole armour of God, that ye may be able to withstand in the evil day, and having done all, to stand," Eph. vi. 10, &c. Not doubting, but that if we shew the same courage, and indefatigable zeal and labour, to defend, as our adversaries to reproach, divide and ruin our Church, neither their united malice, nor power, nor all the plots and machinations of Rome, nor the very gates of hell itself, shall ever be able to prevail against her. And let us trust in that gracious Providence, which so miraculously delivered her on this day, that though she lies bleeding of the wounds she has received in the house of her friends, Lam. ii. 2, 4, "though the ways of Zion may mourn for a time, and her gates be desolate, her priests sigh, and she in bitterness, because her adversaries are chief, and her enemies at present prosper; though among all her lovers she has few to comfort her, and many of her friends have dealt treacherously with her, and are become her enemies," Zech. xiii. 6, "though there are few to guide her among all the sons whom she hath brought forth; neither are there many that take her by the hand, of all the sons that she hath brought up," Isa. li. 18, "though her enemies cry, Down with her, down with her, even to the ground;" yet there is a God that can and will raise her up, if we forsake her not. Let us not therefore ungratefully contribute to her destruction; but let us continue stedfast, immoveable, always abounding in the work of the Lord, forasmuch as we know that our labour will not be in vain in the Lord. 1 Cor. xv. 58. Now the God of all grace, who hath called us into his eternal glory by Christ Jesus, after that ye have suffered a-while, make you perfect, stablish, strengthen, settle you. 1 Pet. v. 10, 11. To him be glory and dominion, for ever and ever. Amen.*

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* Of the numerous publications, which were more or less directly called forth by this Discourse, several are inserted in the Sommers' Collections. The second part of 'Faults on both Sides,' (4th Collection, vol. 3, p. 327,) exhibits much learning and ability, and concludes with the following extract from a Sermon, preached before the House of Lords by the excellent Sharpe, archbishop of York, (see his Case, vol. 11, p. 1123,) Jan. 30, 1700:

"As the laws of the land are the measures of our active obedience, so also are the same laws the measures of our submission; and as we are not bound to obey, but where the laws and constitution require our obedience, so neither are we bound to submit, but as the laws and constitution do require our submission.

"If a preacher in the pulpit should presume to give his judgment about the management of public affairs, or to lay down doctrines as from Christ about the forms and models of kingdoms and commonwealths, or to adjust the limits of the prerogative of the prince, or of the liberties of the subject in our present government: I say, if a divine should meddle with such matters as these in his Sermons, I do not know how he can be excused from the just censure of meddling with things that nothing concern him. This is, indeed, a practising in

" Let us conclude all in that excellent Collect of our Church;

" 'O Lord, we beseech thee, let thy continual pity cleanse and defend thy Church; and because it cannot continue in safety without thy succour, preserve it evermore, by thy help and goodness, through Jesus Christ, our Lord.' "

After which the Lords adjourned to the House of Lords.

The Second Day.

Tuesday, Feb. 28.

The Lords coming down into Westminster-hall, and being seated in the manner beforementioned, Proclamation was made by the Serjeant at Arms as follows:

Our sovereign lady the queen doth strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

Then another Proclamation was made: Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy bail, else thou forfeitest thy recognizance.

The Doctor appearing at the bar accordingly, with his Counsel as before,

Lord Chancellor. Gentlemen of the House of Commons, you may proceed in your Evidence.

Sir *Joseph Jekyll.* My lords, yesterday your lordships heard the Articles against Dr. Sacheverell, his Answer, and the Commons' Replication, read; and the Charge being opened, your lordships likewise heard the Doctor's Sermon preached at St. Paul's, and the Dedication of his Derby Sermon; so that the case is now fully before your lordships.

That part which is assigned to me, and some other gentlemen, is to maintain the First Article of the Commons' Charge. The method I shall take will be, first, to shew the importance of this Article; secondly, to clear up and vindicate the justice of the Revolution; and, thirdly, to state the evidence or proof of this Article, which charges the Doctor with traducing and condemning the Revolution.

My lords, I must premise, that the Commons cannot but think it hard, that in this assembly of the British nation, they should now, after more than 20 years enjoyment of the benefits arising by the Revolution; they cannot but think it hard, I say, that in this place, and at this time, they should be forced to plead in vindication of the justice of that Revolution. But since we must give up our right to the laws and liberties of the kingdom, or (which i all one) be precarious in the enjoyment c them, and hold them only during pleasure if this doctrine of unlimited Non-Resistanc prevails, the Commons have been content t undertake this prosecution; and they wh share in the legislature with your lordships have put themselves into the condition of suiter for justice against this offender, in whom you lordships will find the reverse of a true Britis subject: for such a one is dutiful and submis sive to his prince, and true to the liberty of hi country; but in this criminal your lordship will find virulent faction, and slavish submis sion.

As to the importance of this Article, you lordships were rightly told yesterday, that th whole Charge centers in this Article. If th justice of the Revolution be established, th Toleration will be rejoiced in by some, and b acquiesced in by all; the Resolutions of th two Houses of Parliament will have a ju regard shewn to them; her majesty's admi nistration will be no longer defamed, nor wi that unhappy distinction of parties be capabl of being heightened amongst us. But if th justice of the Revolution (which is our founda tion) be questioned, every thing that is built o it is in some degree shaken, and occasion i given for disputes and factions, never to b ended but by a total subversion of our con stitution.

My lords, as it is self-evident that the honou of her majesty's government stands upon th justice of the Revolution, so doth the peac and tranquillity of it depend upon that als The Commons may appeal to your lordships and the whole nation, in this matter: Fro what quarter is it, that all that opposition an obstruction to the administration of the lat king, and her present majesty, have come Has it not been from those who have ques tioned the lawfulness of the Resistance mad use of in the Revolution? whose pursuit afte power is indefatigable, and to obtain whic they would make a willing sacrifice of th common liberty; whilst others who have contrary principle, and are convinced of th justice of that proceeding, have acted a quit contrary part. Have they not contribute every thing in their power to strengthen th government in her present majesty's hands, a well as the late king's; and that with a ste and constancy through several changes, whic nothing but a principle could inspire? Hov much is owing to this zeal in promoting th settlement of the Protestant Succession, an how little to the contrary principle, every on that remembers the state of things at the en of the late king's reign can tell. Upon th present question, therefore, my lords, depen our present happiness, and future hopes. Hat not this principle of unlimited Non-Resistanc been revived by the professed and undisguise friends of the Pretender? Hath it not bee prosecuted with an unusual warmth, since hi attempt upon her majesty's crown? Can th

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state matters; and is usurping an office that belongs to another profession, and to men of another character; and I should account it every whit as indecent in a clergyman to take upon him to deal in these points, as it would be for him to determine titles of land in the pulpit, which are in dispute in Westminster-hall."

Pretender have any hopes, but from the keeping alive such notions? Or can the queen's title receive any advantage from them? Or can it be reasonable to preach this doctrine in the reign of the best of princes, which can be of no use to any but the worst?

In clearing up and vindicating the justice of the Revolution, which was the second thing proposed, it is far from the intent of the Commons to state the limits and bounds of the subject's submission to the sovereign. That which the law hath been wisely silent in, the Commons desire to be silent in too; nor will they put any case of a justifiable Resistance, but that of the Revolution only; and they persuade themselves that the doing right to that Resistance, will be so far from promoting popular licence or confusion, that it will have a contrary effect, and be a means of settling men's minds in the love of, and veneration for the laws; to rescue and secure which, was the only aim and intention of those concerned in that Resistance.

To make out the justice of the Revolution, it may be laid down, that as the law is the only measure of the prince's authority, and the people's subjection, so the law derives its being and efficacy from common consent: And to place it on any other foundation than common consent, is to take away the obligation this notion of common consent puts both prince and people under to observe the laws. And upon this solid and rational foundation, the lawyers in all ages have placed that obligation, as appears by all our law-books. But instead of this, of later times, patriarchical and other fantastical schemes have been framed, to rest the authority of the law upon; and so questions of divinity have been blended with questions of law; when it is plain, that religion hath nothing to do to extend the authority of the prince, or the submission of the subject, but only to secure the legal authority of the one, and enforce the due submission of the other, from the consideration of higher rewards and heavier punishments. And if this distinction were attended to, it might serve to bury the useless labours (to say no worse of them) of several divines, and others, on these subjects, in utter oblivion.

My lords, nothing is plainer, than that the people have a right to the laws and the constitution. This right the nation hath asserted, and recovered out of the hands of those who had unpossessed them of it at several times. There are of this two famous instances in the knowledge of the present age; I mean that of the Restoration, and that of the Revolution; in both these great events were the regal power and the rights of the people recovered. And it is hard to say in which the people have the greatest interest; for the Commons are sensible, that there is not one legal power belonging to the crown, but they have an interest in it; and I doubt not, but they will always be as careful to support the rights of the crown, as their own privileges.

My lords, that the constitution was wholly lost before, and recovered by the Restoration, is known to all; and before the Revolution, it is known how Popery and absolute power had invaded the constitution. The regal supremacy, of such absolute necessity to preserve the peace of the kingdom, was disclaimed, and the papal supremacy, by a solemn embassy to Rome, owned and acknowledged, and no footsteps left of the regal supremacy but that which was worse than naught, an illegal High Commission Court: and at that time the popular rights, in almost all the species of them, were invaded, that great privilege of the people, on which all others depend, that of giving their consent to the making new, or repealing old laws, was invaded; and a Dispensing Power, such as rendered all our laws precarious, and at the will of the prince, was exercised. These, and a great many other acts of absolute power, are mentioned in that act of parliament, called The Bill of Rights. It would be to mis-spend your lordships' time, to mention all the instances there given: for, my lords, the whole tenor of the administration then in being, was agreed by all to be a total departure from the constitution; the nation was at that time united in that opinion, all but the criminal part of it. And as the nation joined in the judgment of their disease, so they did in the remedy. They saw there was no remedy left, but the last; and when that remedy took place, the whole frame of the government was restored entire and unhurt. This shewed the excellent temper the nation was in at that time, that after such provocations from an abuse of the regal power, and such a convulsion, no one part of the constitution was altered, or suffered the least damage; but, on the contrary, the whole received new life and vigour.

My lords, as that doctrine of unlimited Non-Resistance was implicitly renounced by the whole nation in the Revolution, so divers acts of parliament afterwards passed, expressing that renunciation. I beg leave to read a few passages out of the laws that were then made. In the first of king William and queen Mary, was the Act for abrogating the Oaths of Supremacy and Allegiance, and appointing other oaths. By that act, the Declaration injoined to be taken by several acts, in the time of king Charles 2, to this purpose, That it is not lawful, on any pretence whatsoever, to take up arms against the king, was taken away. Then in the second session of that parliament, was the Act for declaring the Rights and Liberties of the Subject: in that act notice is taken, that the late king James did endeavour to subvert and extirpate the Protestant Religion, and the laws and liberties of the kingdom; and the particular instances of male-administration are set forth: then it declares, That that unhappy prince had abdicated the government, and the throne was thereby vacant; and that it had pleased Almighty God to make the prince of Orange the glorious instrument of delivering the kingdom from Popery and Arbitrary Power

And if the instrument, who brought about that deliverance, be stiled glorious, surely the means used by him is (in consequence) approved and applauded; and his late majesty is mentioned as the same glorious instrument, in the Act for paying the States-General the charges of his expedition. And surely this is an approbation of the means used by him, when that Act charges the people with 600,000*l.* for those means, viz. the force he brought along with him. But if it should be thought these words are too general, and do not particularly approve the Resistance at the Revolution; there came a memorable occasion, when the parliament had that particular under their consideration; and that was, when they were considering, whether they should meddle with so tender a thing, as the taking away the benefit of the law from a great many of the subjects of the kingdom? Which was done by an Act in the same second session of that parliament, intitled 'An Act for preventing vexatious Suits, 'against such as acted in order to the bringing 'in their majesties, or for their service.' There they take notice, that at the time of his majesty's glorious enterprize, for delivering this kingdom from Popery and Arbitrary Power, and in aid and pursuance of the same, divers lords, gentlemen, and other good people well affected to their country, did act as lieutenants, deputy-lieutenants, justices of the peace, or other officers, civil or military, though not sufficiently authorised thereunto; and did apprehend and put in custody several criminous and suspected persons; and did seize and use divers horses, arms, and other things; and did enter into the houses and possessions of several persons, and did quarter, and cause to be quartered, soldiers and others there; which proceedings, in times of peace and common safety, would not have been warrantable: yet that Act declares they were necessary, in regard of the exigence of public affairs, and ought to be justified; and provides an indemnity for those who acted in that Resistance, from the actions that might be brought by their fellow-subjects.

My lords, I shall conclude this head with taking notice of the Form of Prayer, appointed by royal authority for the 5th of November, now doubly memorable: there is in that Form not only thanks offered to Almighty God for the Revolution, but for the success given to those means that were used to bring about that wonderful deliverance: what else is the meaning of thanking God for giving his late majesty a safe arrival here, and making all opposition fall before him, till he became our king and governor?

But, my lords, notwithstanding the justice of those steps that were taken to bring about the Revolution, notwithstanding the temper and prudence that was shewn in the settlement of it, and the sanction since given to it, not only by the royal, but the whole legislative authority, Dr. Sacheverell hath condemned the Resistance, (which was the principal, if not the only means) by which that deliverance was wrought; which was the last thing I proposed to shew to your lordships.

My lords, this Article is divided into three branches: first, the general Charge, that he suggests and maintains, that the necessary means used to bring about the Revolution were odious and unjustifiable. The second and third branches are particulars of that general; viz. That his late majesty disclaimed the least imputation of Resistance; and that to impute Resistance to the Revolution, is to cast black and odious colours upon his late majesty and the said Revolution.

To maintain this Article, I will not repeat the particular words of the Sermon, in order to the application of them; that is a province which is assigned to another gentleman, who will speak after me: but I shall offer to your lordships what I apprehend to be the clear sense and meaning of those passages in the Sermon, which maintain this Article. In the 11th page of the quarto edition, he lays down a general position, of the utter illegality of Resistance, upon any pretence whatsoever. He says, there are some who deny this position, who are new preachers, and new politicians, who teach divers antimonarchical and pernicious doctrines. He goes on, and says, they do not only deny this position, but urge the Revolution in defence of their denial; that is, by producing that as an instance of a justifiable Resistance. Then he exclaims against these men, as endeavouring to cast black and odious colours on the late king and the Revolution; whereas he says, the king disclaimed the least imputation of Resistance by his Declaration; and the parliament disowned it, because they declare they only filled a vacant throne, without taking notice how it became so; and they burnt a book which alleged conquest, because it had that ingredient of Resistance in it.

This extract out of the Sermon makes out the first Article, which is, his condemning the Resistance, which the Commons call the necessary means used to bring about the Revolution. For, First, that general position of his condemns Resistance in any case whatsoever. Secondly, He introduces some as denying this position, and fastens a vile and odious character upon them. Thirdly, He makes those that deny this doctrine object to it an authority or precedent of a lawful Resistance, viz. that at the Revolution; but, my lords, this he does only to give up the lawfulness of that Resistance, and condemn that as well as another. For, Fourthly, He answers this objection, by denying there was any Resistance in that case; a fact as clear as the sun at noon day, and which all the nation saw and rejoiced at. He brings the late king and the parliament to witness against any Resistance in the Revolution; and yet he has shewn but two quotations out of the Prince of Orange's Declaration, one in his Answer, and the other in the printed Sermon, that his late ma-

jesty was so far from disclaiming Resistance, that he avowed it, and invited the subjects of this kingdom to join in that Resistance; for in his Answer, he cites that passage in his Declaration, wherein his majesty takes notice, that he carried a force with him, sufficient, by the blessing of God, to defend him from the violence of evil counsellors; and that he designed that expedition to oblige king James to call a free parliament: and by his quotation of another passage in the Prince of Orange's Declaration, it appears his late majesty was, by divers subjects of king James's, invited to, and assisted in that expedition; which being an expedition by force, to oblige that king to call a free parliament, doth it not carry in it a plain and manifest avowing of Resistance? My lords, as to what he says in relation to the parliament's disowning any Resistance at the Revolution, by asserting, that they set the crown on the king's head on no other title than that of the vacancy of the throne, that appears to be directly otherwise from the several passages in divers Acts of Parliament which I have before mentioned: to which I only add, that in the Conference between the two Houses, previous to the settling the crown on the king's head, the word 'Abdicated' was insisted upon and carried; for that it included in it the male-administration of king James, which the word 'Deserted' (desired to be used instead of it) did not: and this appears by the Journal. He therefore knowing that there was Resistance at the Revolution, and that the late king and the parliament avowed that Resistance; and he pretending to defend it only by denying those facts, hath (by a necessary implication) asserted, that that Resistance was not an exception to his general rule, but stands condemned by it.

My lords, I shall not enter upon the consideration of the Doctor's Answer to this Article, because I do not know whether his counsel will think fit to abide by it; nor would I meddle with any thing that is proper for the Reply.

The sum of the whole proof is this: the Doctor lays down a doctrine, condemning Resistance in all cases whatsoever: he makes those who deny this doctrine, asserters of antimonarchical principles: he takes notice of the Revolution, only to give it up: he admits, that if there were Resistance in that case, that it was as unlawful as any other Resistance. He asserts that to be true, which every one knows to be false: he says, the late king disclaimed the least imputation of Resistance; the parliament disowned it; and they who say there was any Resistance in it, cast black and odious colours on the late king and the Revolution; and consequently, he condemns the Resistance used to bring about the Revolution, which is the matter of the first Article.

This, my lords, is what the Commons rely upon, to maintain and make out the first Article of their Charge against the criminal at the bar; and they refer the consideration of it to your lordships' wisdom and justice.

Solicitor General, (Sir Rob. Eyre). My lords, It falls to my share, to state to your lordships the several passages in the Sermon preached at St. Paul's, which the Commons rely upon as a proof of the first Article; and to shew the particular weakness and insufficiency of the Answer given to this Charge.

The Charge is, That the gentleman at the bar doth suggest and maintain, that the necessary means used to bring about the late happy Revolution, were odious and unjustifiable; that his late majesty, in his Declaration, disclaimed the least imputation of Resistance; and, that to impute Resistance to the Revolution, is to cast black and odious colours upon his late majesty and the said Revolution.

The passages upon which this first Article is founded, are in the eleventh and twelfth pages of this Sermon; where Dr. Sacheverell having first asserted, "That the grand security of our government, and the very pillar upon which it stands, is founded upon the steady belief of the subjects' obligation to an absolute and unconditional obedience to the supreme power in all things lawful, and the utter illegality of Resistance upon any pretence whatsoever, which, he says, has been lately exploded and ridiculed," goes on in these words:

"Our adversaries think they effectually stop our mouths, and have us sure and unanswerable on this point, when they urge the Revolution of this day in their defence; but certainly they are the greatest enemies of that, and his late majesty, and the most ungrateful for the deliverance, who endeavour to cast such black and odious colours upon both. How often must they be told, that the king himself solemnly disclaimed the least imputation of Resistance in his Declaration? And that the parliament declared, that they set the crown on his head upon no other title but that of the vacancy of the throne? And did they not unanimously condemn to the flames that infamous libel, that would have pleaded the title of conquest, by which Resistance was supposed?

These words the Commons apprehend to be a full proof of the assertions charged in the first Article; for Resistance was the necessary means used to bring about the Revolution.

And the Doctor expressly affirms in this place, that the king disclaimed the least imputation of Resistance; he asserts it as a thing notorious, which nobody could be a stranger to: He says, the king disclaimed it solemnly; he disclaimed it in his Declaration.

And he as plainly affirms, that to impute Resistance to the Revolution, is to cast black and odious colours upon his late majesty and the Revolution; for he first lays down the utter illegality of Resistance upon any pretence whatsoever, as a fundamental doctrine; and then acquaints his auditory, that his adversaries though they could effectually stop his mouth, and had him sure and unanswerable on this point, when they urged the Revolution in their defence; but that they were the greatest enemies to the king and to the Revolution, who

endeavoured to cast such black and odious colours upon both.

Now this point, which he says his adversaries thought they had him sure and unanswerably upon, is plainly the point of Resistance, which he had asserted to be illegal upon any pretence whatsoever; and others, he says, had denied, and had urged the Revolution in their defence.

And the urging of the Revolution in that case, as an instance of the legality of Resistance, in opposition to his general doctrine, is what he calls casting black and odious colours upon the king and the Revolution; for his argument runs thus: All Resistance is utterly illegal; the king disclaimed the least imputation of Resistance; the parliament set the crown upon his head upon no other title than that of the vacancy of the throne; and burnt a book because it asserted a title by which Resistance was supposed; and therefore to impute Resistance to the Revolution, is to cast black and odious colours upon his late majesty and the Revolution.

This, my Lords, is the force of his reasoning, and the plain and obvious sense of this part of the paragraph; and therefore fully makes out the charge of his asserting and maintaining, that to impute Resistance to the Revolution, is to cast black and odious colours upon his late majesty and the said Revolution.

I come now to consider the Answer he makes to this Article, which he divides into three parts.

"And first, he denies that he doth suggest and maintain, that the necessary means used to bring about the happy Revolution were odious and unjustifiable; and says, that he doth not affirm, in any part of that Sermon, any thing concerning the necessary means used to bring about the happy Revolution; the said Henry Sacheverell is so far from reflecting on his late majesty or the happy Revolution, that he endeavours in that Sermon, to clear the Revolution, and his late majesty, from the black and odious colours which their greatest enemies had cast upon both."

Now the material part of the Answer to this branch of the Article is "That he denies his maintaining, that the necessary means used to bring about the Revolution were odious and unjustifiable, and his affirming any thing concerning those necessary means." But this is no more than saying, that he has affirmed nothing by the words 'necessary means;' and it is very true, that the words 'necessary means' are not used in any part of the Sermon.

But nobody will say, that it is requisite to charge the assertion in the very words.

And therefore, if Resistance was necessary, and the means used, in that extraordinary case of the Revolution, he has asserted the means to be odious and unjustifiable, though he has done it in other terms, and by words more particular and express.

"And as to that part of the Article whereby he is charged with suggesting and maintaining, that his late majesty in his Declaration disclaimeth the least imputation of Resistance:

"He acknowledges himself to have made this suggestion; but says, that he made it not in dishonour, but in vindication of his majesty; the Resistance he represents the king to have disclaimed, being such a Resistance as tended to the conquest of this realm; for which he refers to that part of the Declaration which is printed at the bottom of the 11th page in the Sermon; and upon this ground he observes, that there are these other passages in the Declaration——'We have thought fit to go over to England, and to carry over with us a force sufficient, by the blessing of God, to defend ourselves from the violence of evil counsellors. ——We think fit to declare, that this our expedition is intended for no other design than to have a free and lawful parliament assembled.'"

Now, in this part of his Answer, Dr. Sacheverell admits, that he made the suggestion charged upon him, in the same words that are used in the Article; but defends himself by alleging, that the Commons have mistaken his meaning—He meant only, that the king disclaimed a Resistance which tended to conquest.

But it is clear and plain, that the words have no such limited or restrained sense, and that the meaning he would now put upon them is a mere shift and evasion; for the proposition is general, the king disclaimed the least imputation of Resistance: And the use he makes of it shews, that his meaning was as general as his words; for he is replying upon those who urge the Revolution in answer to his general position, that Resistance is utterly illegal upon any pretence whatsoever; and how does he answer the case of the Revolution, or is it possible to be answered, but by saying, that there was no Resistance at all in the Revolution; the king, who was principally concerned in it, disclaimed the least imputation of Resistance?

The question is stated upon Resistance in general; whether Resistance in any case, or upon any occasion, be lawful?

And therefore, if the lawfulness of Resistance in any case be allowed, it is impossible that his general assertion should stand; and it is equally impossible to get clear of the objection, without denying the Resistance.

Dr. Sacheverell was aware of this, and therefore denies that there was any Resistance at all in the Revolution, and says, that the least imputation of it was solemnly disclaimed and disavowed.

For had he said, in express terms, that the king disclaimed all imputation of Resistance that tended to conquest, this would have been no answer to the objection: for if there was any Resistance, though not the particular Resistance which the king disclaimed; and if that Resistance which was used be agreed to be lawful, his fundamental doctrine must certainly be shaken. And therefore, if your lordships suppose him to make any use at all of this assertion, his words plainly spoke his meaning;

and represent the king to have disclaimed all Resistance whatsoever.

But he excuses the making of this suggestion, by declaring, "That he made it not in dishonour, but in vindication of his majesty; and therefore, whether he was mistaken or not in expressing himself, as if the late king had disclaimed all imputation of Resistance, when he meant thereby, that the late king disclaimed the imputation of a design of conquest, he humbly conceives such a suggestion, plainly designed for the honour of the late king, cannot in any reasonable construction be thought a reflection upon his said late majesty, or deemed any high crime or misdemeanor."

My lords, had these words been spoken in vindication of his late majesty, our great and glorious Deliverer, the Commons, who have so much at heart the honour of the late king, and the justice of the Revolution, had never charged them upon this gentleman as a crime.

But they carry with them the highest reflection upon the honour and justice of his majesty; for they suppose that he denied the lawfulness of Resistance when he was actually engaged in it, and disclaimed the least imputation of Resistance when he brought over an army on purpose to maintain that Resistance, to which all the people of England were invited and encouraged by his Declaration.

And this assertion, of the king's disclaiming all Resistance, could never be meant in vindication of his majesty from any imputation of a design of conquest; for there was no occasion for vindicating the king upon this point, the subject-matter of the discourse did not lead him to it; for the business of the Sermon, or of this particular paragraph, is not to vindicate the honour of the king from any such aspersion, or to maintain the liberties of England, by asserting, that the constitution of government still remains, and was not broken and dissolved by conquest at the Revolution: had that been his ground, his mistake had been more excusable; for then it had been proper to have urged, that there was no step taken towards the Revolution which looked like a design of conquest; and that the armed force which was used in it, and had the appearance of such a design, was not intended to conquer; for the king, who commanded, disclaimed all imputation of Resistance that tended to conquest. Upon such a question these things had been very properly urged, and there might have been some indulgence to a general expression, that in any propriety of speech could have received such a meaning.

But when the question is not, Whether the Revolution was brought about by conquest, or what would be the consequence of such an assertion, either in regard to the honour of the king, or the condition of the people, there can be no colour for saying that he meant by this general expression, which carries no such meaning in itself, that the king disclaimed conquest, or a Resistance which tended to conquest only.

Especially, my lords, when the subject-matter of his discourse naturally led him to assert this proposition in the common and ordinary sense which the words import: for he is asserting the doctrine of absolute Non-Resistance; and shewing, that the lawfulness of the Revolution was no argument against it; and why? Because the king disclaimed the least imputation of Resistance; there was no such wicked ingredient as Resistance in it; no other answer would have served him; and therefore it can never be supposed that he meant to clear the king from any design of conquest, or intended to say any thing in vindication of his majesty upon that head.

And, in truth, it is an apparent scandal upon the memory of the late king, to say there was any occasion to clear him from this imputation; his actions spoke the justice and sincerity of his intentions; his business was not to conquer and enslave us, but to deliver us from Popery and Slavery, the most dreadful calamities that could befal us, and to resettle and establish our constitution both in Church and State. This was the ground of the glorious enterprize he undertook, and the general aim and design of all his labours through the whole course of his reign.

It is therefore plain, that what Dr. Sacheverell says in his Answer, in excuse of his assertion, relating to the king's disclaiming all imputation of Resistance, was rather made to the dishonour, than in vindication of his majesty; for there was no colour to suggest that he needed any such vindication or defence.

And that the king did not disclaim all imputation of Resistance, is evident, even from that part of his Declaration which is cited in the Answer, whereby he declares to the people (to encourage them to join with him) that he had brought over a sufficient force to defend himself from the violence of evil counsellors. And that this expedition was designed to have a free and lawful parliament assembled, which was a plain force upon the executive power that was directed by those evil counsellors, who, by subverting the liberties of corporations, and practising upon the freedom of elections, never intended that any such free or lawful parliament should be assembled.

This is plain Resistance in the sense that Dr. Sacheverell takes the word; and is so far from a justification, that there is no colour to say, that his majesty disclaimed the least imputation of Resistance.

As to the last branch of the Article, whereby he is charged that he suggests and maintains, "That to impute Resistance to the Revolution, is to cast black and odious colours upon his late majesty and the said Revolution; he denies that he suggests or maintains any such position."

But this negative is fully answered by what has been offered to your lordships upon the first head of this Article, his asserting, that the necessary means used to bring about the Revolution were odious and unjustifiable; for if Resistance be utterly illegal upon any pretence whatsoever, and there was Resistance in the Revolution, it necessarily follows, that to

impute Resistance to the Revolution, is to cast black and odious colours upon it. And this is expressly asserted by his stating the case of the Revolution, in which there was Resistance, as an objection to his general doctrine of Non-Resistance upon any pretence whatsoever; and then answering this objection, by saying, that the urging of the Revolution, as an instance of the legality of Resistance, was casting black and odious colours upon his late majesty and the late Revolution: for there could be no black or odious colours cast, but from the shaking that fundamental doctrine of absolute Non-Resistance; the belief of which he asserts to be the pillar upon which the government of England stands.

And therefore the imputing of Resistance to the Revolution, must, according to the principles he lays down, cast black and odious colours upon the Revolution, and upon the great and glorious instrument of it, his late majesty, by whom it was happily brought about.

And doctor Sacheverell himself, by the subsequent part of his Answer, seems to think that this assertion is fairly and plainly inferred from the tenor of his discourse.

For he is pleased to excuse it, by saying, "That he intended to apply it not to such persons who impute Resistance to the Revolution, of whom he affirms nothing; but to those new preachers, and new politicians, who teach in contradiction both to the Gospel and the laws, that the people have the power invested in them, the fountain and original of it, to cancel their allegiance at their pleasure, and call their sovereign to account for high-treason against his subjects, and who urge the Revolution in defence of such principles; and that, unless those who impute Resistance to the Revolution be the same with those new preachers and new politicians, he affirms nothing concerning them."

But, my lords, this part of his Answer is far from excusing or extenuating his crime; for if a proposition be true, it will lose nothing of its weight and force, though the vilest man upon earth should make use of it; and it can be no argument against a true principle, that it has been made use of to ill purposes, and to maintain positions which are not warranted by it.

It is rather an aggravation of his crime, and a high reflection upon the Commons, and the justice of this proceeding, to suppose that any such wicked consequences, as he mentions, can possibly be inferred from defending the Resistance at the Revolution: and the question is, whether doctor Sacheverell himself asserts, that to impute Resistance to the Revolution, be to cast black and odious colours upon it; and not, of whom he affirms the casting such black and odious colours?

I go on to the last part of his Answer to this Article, where he says, "That upon the strictest search into his said Sermon preached at St. Paul's, he doth not find that he hath given the least colourable pretence for the accusation exhibited against him in this first Article, but barely by his asserting the utter illegalit of Resistance to the supreme power upon an pretence whatsoever; for which he conceive he has the authority of the Church of Englan which has taught and inculcated this doctrin in her Homilies—And he doth further insis that this assertion is agreeable to, and warrante by, the common law of England, and divers act of parliament now remaining in full force.

Now it must be agreed, that there is n colourable pretence to charge him with sugges ing and maintaining, that the Resistance use at the Revolution was odious and unjustifiable if the doctrine of the utter illegality of Re sistance upon any pretence whatsoever, b true; for upon this principle his censure i just, and it must necessarily follow, that th Resistance used in bringing about the Revolu tion is not to be maintained.

And therefore the Commons should thin themselves ungrateful for the deliverance, they did not vindicate the honour of the lat king, and of those illustrious persons, who upon his invitation, defended the constitutio at that time by Resistance, and declare tha this Resistance was lawful, honourable, an just.

They had reason to hope, that after so man years had passed in a happy enjoyment of a the advantages of a free-born people, and at time when the subjects of this kingdom are i the full possession of their rights and liberties under her majesty's gracious protection, an the wisest and happiest administration tha England ever saw, that nobody could hav been so wicked as to cast an odium upon th necessary means whereby these blessings wer obtained, and are continued to us. But since notwithstanding our blessed deliverance fro Popery and Arbitrary Power, and the benefit we enjoy by restoring the constitution both i Church and State; and above all, by her ma jesty's happy administration, which has im proved the lustre of the crown to the honour the nation, and the common benefit of ever particular subject; yet there are men of rest less and turbulent spirits, enemies to the Re volution, who are continually urging the Re sistance then used as a fundamental error, fat to every thing that has been built upon it: thi my lords, strikes so directly at the prese establishment, that the Commons think it the indispensible duty to demand your lordship judgment upon this important subject.

And they think it the more necessary at th time, because it is plain and obvious to ever one's observation, that since the late attem made by the Pretender, this principle of th utter illegality of Resistance upon any preten whatsoever, has been espoused and maintaine with more than ordinary warmth and zeal; an the Commons apprehend, that it can have n other aim or tendency than to blacken th Revolution, and thereby to shake the foundatio of our present happy settlement.

Your lordships will, therefore, in your gre wisdom, consider the consequences of th

assertion, in regard to her majesty, the Protestant Succession, and the future happiness of this kingdom.

The Commons must always resent, with the utmost detestation and abhorrence, every position that may shake the authority of that act of parliament, whereby the crown is settled upon her majesty, and whereby the Lords Spiritual and Temporal, and Commons do, in the name of all the people of England, most humbly and faithfully submit themselves, their heirs and posterities, to her majesty, which this general principle of absolute Non-Resistance must certainly shake.

For if the Resistance at the Revolution was illegal, the Revolution settled in usurpation, and this act can have no greater force and authority than an act passed under an usurper.

And the Commons take leave to observe, that the authority of this parliamentary settlement is a matter of the greatest consequence to maintain, in a case where the hereditary right to the crown is contested; for her majesty's most bitter and implacable enemies, the friends of the Pretender, (who all assert the utter illegality of the Resistance used at the Revolution) can advance his title to the crown, and call him king, upon no other ground than the pretence of an hereditary right.

The Commons, therefore, out of the most profound duty and allegiance, which they owe, and shall ever pay to her majesty, and to maintain the security of her government, and guard her throne against every insinuation that may promote or favour the interest of the Pretender, think themselves obliged to take notice of this assertion, as tending to weaken the authority of this act of parliament, whereby her majesty's title is declared.

Your lordships will likewise consider of what consequence the dishonouring of the Revolution may be to posterity, and the future happiness of this kingdom in a Protestant succession to the crown. For by the same act, all persons who shall hold communion with the see of Rome, or shall marry Papists, are declared uncapable to inherit, possess, or enjoy the crown. And it is enacted, that the crown and government shall from time to time descend to, and be enjoyed by, such persons, being Protestants, that should have inherited and enjoyed the same, in case such Popish prince were naturally dead.

And the immediate Protestant succession in the illustrious House of Hanover, is likewise settled by an act of the same reign.

This shews of what importance it is, to the present and future happiness of this kingdom, to clear his late majesty and the Revolution from those black and odious colours which this gentleman has cast upon both.

But, my lords, he makes it part of his defence, that his assertion is agreeable to the common law of England, and divers acts of parliament now remaining in force.

The gentleman that spoke before me, has shewn how far that assertion is a direct contradiction to several acts of parliament; and therefore I shall only say, that it can never be supposed that the laws were made to set up a despotic power to destroy themselves, and to warrant the subversion of a constitution of government which they were designed to establish and defend.

This would be a strange, absurd, and contradictory imagination, and was thought so at the Revolution by the wisest men of that time, by the best friends to the monarchy, and men the most eminent for their sufferings in the cause of the Church.

And it appears by the several instances mentioned in the Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown, that at the time of the Revolution there was a total subversion of the constitution of government both in Church and State, which is a case that the laws of England could never suppose, provide for, or have in view.

And the same Answer may with equal reason be applied to the general doctrine of the Church, expressed in her Homilies.

This, my lords, is what I have to offer to your lordships in maintenance of the first Article; I am sensible how defective I have been, but what I have failed in, will be abundantly supplied by the gentlemen who are appointed to assist in maintaining this Article.

Sir *John Holland*. My lords, the present consideration is of the greatest importance; no less, than whether so many of your lordships, and the Commons of Great Britain, who took up arms at the Revolution, and were then thought patriots of your country, were really rebels? whether our late Deliverer was an usurper? and whether the Protestant Succession is legal and valid?

All these considerations depend upon the lawfulness of the Resistance at the Revolution. That there was a Resistance is most plain, if taking up arms in Yorkshire, Nottinghamshire, Cheshire, and almost all the counties of England; if the desertion of a prince's own troops to an invading prince, and turning their arms against their sovereign, be Resistance. But if subjects be obliged to absolute and unconditional obedience, the convention of the states, the settlements and entail of the crown by them, and the further settlement in the Protestant Succession under that settlement, must, from that resistance, be unlawful and void.

The criminal was aware of this just objection to his general doctrine, when applied to the Revolution; as appears from his endeavouring, upon second thoughts, to conceal it by his marginal note, to hint, that by Resistance he meant Conquest. And no wonder he endeavoured to colour so bold a stroke, which he could not but expect to hear of with the utmost resentment from the government.

But it so falls out, my lords, that what he trusted to for a screen, aggravates the heinousness of his crime; for he shews, that he instils into his auditors those notions from the

pulpit, which he dares not own in print. Nothing can be more manifest, than that he could not by Resistance mean Conquest, even from his own expressions: for in the very next period he says, "And did they not," i. e. the parliament, "unanimously condemn to the flames (as it justly deserved) that infamous libel, that would have pleaded the title of Conquest, by which Resistance was supposed?" So that he knew them to be distinct notions; and indeed so they must be, because one may be without the other.

It is an unaccountable presumption, that he could suppose so weak a pretence could pass upon the world; but much more surprising it is, that he could apprehend so mean a subterfuge could prevent your lordships' justice. But from hence the Commons observe, that he is a concealed man, and of a dangerous spirit; and as such we have brought him hither to reform him, and to be an example to others.

My lords, the Commons would not be understood, as if they were pleading for a licentious Resistance; as if subjects were left to their good-will and pleasure, when they are to obey, and when to resist. No, my lords, they know they are obliged by all the ties of social creatures, and Christians, for wrath and conscience sake to submit to their sovereign. The Commons do not abet humoursome factious arms: they aver them to be rebellious. But they maintain, that that Resistance at the Revolution, which was so necessary, was lawful and just from that necessity.

We do agree, that the laws concerning Obedience, both human and divine, are very express and positive; and no wonder that the Homilies and Fathers, dead and living, follow the same way of expressing our duty in general terms. We readily grant this; but it does not follow that there can be no exceptions from these general rules in conscience.

There is no law more positive, and express, than that which injoins the observation of the Sabbath, for therein we are commanded to 'do no manner of work.' But yet we know, that necessity makes an allowed exception to that general law. And the reason why that necessity is allowed as a just exception to that positive law, will guide us to know what laws will admit of exceptions from necessity, and what not. The reason our divine law-giver assigns is, because 'the Sabbath was made for man, and not man for the Sabbath;' from whence plainly follows this corollary, that where there is a positive law, and that law respects not some principal end for which man was made, there necessity may make a justifiable exception, how express soever that law is.

Now, my lords, whether government was made for man, or man for government, will easily appear from this short observation, that man was made in a state of perfection; and the rectitude of that state supposes the absence of of all those crimes, which are the objects of government, and which government is to reform. And therefore government could not be one end of man's creation; and these general rules of obedience may, upon a real necessity, admit a lawful exception; and such a necessary exception we assert the Revolution to be.

It is with this view of necessity, only absolute necessity of preserving our laws, liberties, and religion; it is with this limitation that we desire to be understood, when any of us speak of Resistance in general. The necessity of the Resistance at the Revolution was at that time obvious to every man. Every one, who either was not, or did not find his easy mind prepared to be a tool to Popery and Slavery, dreaded the instances of that necessity. The cancelling all the security from laws by a dispensing power; the erecting commissions to deprive subjects of their property, not according to law, but humour; the making the whole government depend upon the arbitrary pleasure of the then prince, cannot but be a justification of that necessity before God and man.

And thus, my lords, it was thought, at the time this Resistance was on foot. For then, when the time was most proper for admonitions of this nature, the clergy were so far from averring the unlawfulness of Resistance upon any pretence whatsoever, that the true distinguishing characteristic of a Church-of-England-man then was, wishing that Resistance good luck, and rejoicing at its success. And yet the gentleman at the bar makes this exception the instance of an unjust Resistance, by an ironical assertion of the late king's solemnly disclaiming the least imputation of Resistance in his Declaration; for ironical it must be, when every body must believe that he himself knew the contrary; a figure of speech very well understood, and known to be the most biting sarcasm.

My lords, so much depends upon the Revolution, that the Commons are highly jealous of the honour of it. It is, indeed, twenty years since the Revolution was settled; but it is within much less than twenty years that a Pretender has attempted to invade our country, to set this Revolution aside. That person, even with his own good opinion of his right, knows he can have no pretence to the crown, unless the prisoner's political divinity be true, which we aver it is not. But lest this Pretender should apprehend that his friends are much increased, when he hears that the Revolution is publicly branded in Sermons as black and odious; the Commons have impeached this preacher, that he might not be guilty of this High Crime and Misdemeanor without discouragement, and have brought him to your lordships' bar for justice, that he may not do it with impunity.

Mr. *Walpole.* My lords, the Commons are now making good their Charge against Doctor Henry Sacheverell contained in the first Article, wherein he is accused for suggesting and maintaining, that the necessary means used to bring about the happy Revolution were odious and unjustifiable, and that to impute Resistance

to the Revolution, is to cast black and odious colours on his late majesty and the Revolution.

By what has been already offered to your lordships, I make no doubt but you are fully convinced how injurious these positions must be to the peace and quiet of the kingdom, and how highly they deserve, and loudly call for your lordships' speedy and exemplary justice.

The great licentiousness of the press, in censuring and reflecting upon all parts of the government, has of late given too just cause of offence; but when any pamphlets and common libels are matters of complaint; when none but mercenary scribblers, and the hackney pens of a discontented party, are employed to vent their malice, it is fit to leave them to the common course of the law, and to the ordinary proceeding of the courts below. But, my lords, when the trumpet is sounded in Sion; when the pulpit takes up the cudgels; when the cause of the enemies of our government is called the cause of God, and of the Church; when this bitter and poisonous pill is gilded over with the specious name of loyalty, and the people are taught, for their souls and consciences sake, to swallow these pernicious doctrines; when, instead of sound religion, divinity, and morality, factious and seditious discourses are become the constant entertainments of some congregations; the Commons cannot but think it high time to put a stop to this growing evil, and for the authority of a parliament to interpose, and exert itself, in defence of the Revolution, the present government, and the Protestant Succession. All which the Commons think so materially concerned in this question, that if the doctrines advanced by Doctor Sacheverell are not criminal in the highest degree, it will follow that the necessary means used to bring about the Revolution were illegal, and consequently that the present establishment, and Protestant Succession, founded upon that Revolution, are void and of no effect.

The Commons cannot but apprehend, that the just resentment and indignation they have shewn upon this occasion, will meet with the general applause of all that are heartily and sincerely well affected to her majesty and her government; but for all those, whose principles and practices render them most justly suspected to have other views, they are not at all surprised to find them alarmed, and under the greatest concern at this trial.

I am very sensible, my lords, of the difficulty and nicety that attends the speaking to this point, and that whilst a loyal subject and faithful servant to the best of queens, is speaking in defence of the necessary and commendable Resistance used at the Revolution, his arguments may be misconstrued and misrepresented, as maintaining anti-monarchical schemes.

But surely, my lords, to plead for Resistance, that Resistance, I mean, which alone can be concerned in this debate, is to assert and maintain the very being of our present government and constitution; and to assert Non Resistance in that boundless and unlimited sense in which Doctor Sacheverell presumes to assert it, is to sap and undermine the very foundations of our government, to remove the natural basis and fundamental strength of our constitution, and to leave it underset with imaginary props and buttresses, which do, at best, but ill support a shaken foundation: and it is a most surprising assurance in the enemies of our government, that, whilst they are striking at the root, and digging up the foundations, upon which our present and future settlement is built, they should hope to pass upon the world as friends to either. But so irreconcilable are the professions and practices of some men; so awkwardly do they speak well of what they do not in their hearts approve, that in vindication of his late majesty (for that is a part that sometimes they think useful to act) they declare his most glorious enterprise to save a sinking nation, utterly illegal: to recommend themselves to the queen, they condemn that Revolution, without which she never had been queen, and we a most unhappy people: to testify their zeal and affection for the Protestant Succession, they invalidate all the laws that have been made for securing that blessing to posterity: and lastly, to manifest their aversion, and for ever to blast all hopes of the Pretender, they advance and maintain the hereditary right, as the only true right of the crown. But what interest these opinions may at one time or other be produced to support, and in favour of whose pretensions these insinuations are easily understood to be, and in favour of what settlement they can hardly be construed, I submit to your lordships' consideration.

The utter illegality of Resistance, upon any pretence whatsoever, is the general position laid down in the Sermon, which, if it be strictly, and in the most extensive manner true, the assuming and exercising a power of dispensing with, and suspending the laws; the commitment and prosecution of the bishops; the erecting a court of commissioners for ecclesiastical causes, the levying money by pretence of prerogative; the raising and keeping a standing army without consent of parliament; the violating the freedom of elections of members to serve in parliament; and all the grievances enumerated in the Bill of Rights, were all mere pretences, and not sufficient to warrant and justify what was then done, in defence of the true, ancient, and indubitable rights and liberties of the people of this kingdom; which are now again enacted, ratified and confirmed, and enjoined to be firmly and strictly holden and observed. By what evasions, or distinctions, the Doctor will explain himself off upon this head, I cannot easily foresee; unless he will be so ingenuous as now to confess, what there is too much reason to believe will be his opinion, if ever a proper time shall serve for declaring, that the acts of parliament made upon, and since the Revolution, are only the effects of a happy usurpation, and no part of the true law of the land.

Resistance is no where enacted to be legal, but subjected, by all the laws now in being, to the greatest penalties; it is what is not, cannot, nor ought ever to be described or affirmed, in any positive law, to be excusable: when, and upon what never-to-be-expected occasions, it may be exercised, no man can foresee, and ought never to be thought of, but when an utter subversion of the laws of the realm threatens the whole frame of a constitution, and no redress can otherwise be hoped for: it therefore does, and ought for ever to stand, in the eye and letter of the law, as the highest offence. But because any man, or party of men, may not, out of folly or wantonness, commit treason, or make their own discontents, ill principles, or disguised affections to another interest, a pretence to resist the supreme power, will it follow from thence that the utmost necessity ought not to engage a nation in its own defence for the preservation of the whole? Or, on the other side, because the greatest and most inexpressible emergencies did sufficiently justify and warrant the Resistance of the Revolution, will it be a consequence, that therefore, upon every slight pretext or common occasion, the laws that fence against treason will be of no effect? No, my lords, I hope your just judgment in this case will convince the world, that every seditious, discontented, hot-headed, ungifted, unedifying preacher, (the Doctor will pardon me for borrowing one string of epithets from him, and for once using a little of his own language) who had no hopes of distinguishing himself in the world, but by a matchless indiscretion, may not advance, with impunity, doctrines destructive of the peace and quiet of her majesty's government, and the Protestant Succession, and prepare the minds of the people for an alteration, by giving them ill impressions of the present establishment and its administration.

The doctrine of unlimited, unconditional Passive Obedience, was first invented to support arbitrary and despotic power, and was never promoted or countenanced by any government that had not designs some time or other of making use of it: what then can be the design of preaching this doctrine now, unasked, unsought for, in her majesty's reign, where the law is the only rule and measure of the power of the crown, and of the obedience of the people? If then this doctrine can neither be an advantage or security to her majesty, who neither wants nor desires it, to what end and purpose must every thinking man conclude it is now set on foot, but to unhinge the present government, by setting aside all that has been done in opposition to that doctrine? and when, by these means the way is made clear to another's title, the people are ready instructed to submit to whatever shall be imposed upon them.

It may be expected, after I have said thus much in general, that I should proceed to shew in what parts of the Sermon these aspersions are contained: but, my lords, that part has been so fully and distinctly spoke to by those learned gentlemen who are more proper, and a great deal more able to manage that province, that I will not misspend your lordships' time, by repeating what has been already so fully and justly made out; but so much I will venture to say, that if we remove the rubbage, with which the Doctor has an excellent talent at puzzling common sense, and bring together the several sentences, that can only be relative to one another, it is impossible for the art of man to make any inferences or constructions, so close and strong, as the plain and genuine sense of the whole scope of his Sermon must, at first view, suggest to every man's understanding. And all that the Doctor alleges in his defence is, that in the Revolution there was no Resistance at all; and that the king did utterly disclaim any such imputation. But surely, my lords, it cannot be now necessary to prove Resistance in the Revolution; I should as well expect that your lordships would desire me, for form's sake, to prove the sun shines at noon-day. If then there was most undoubtedly Resistance used to bring about the Revolution, it will follow that all the censures, which are so freely bestowed upon Resistance in general, must attend, and will be imputed to the Revolution: and if Resistance be utterly illegal, upon any pretence whatsoever; if it is a sin, which unrepented of, by the doctrine of the Church of England, carries sure and certain damnation; if, upon repentance, there is no remission of sins without a stedfast purpose to amend the evil we have done, and to make all possible restitution, or at least to do our utmost endeavours for that purpose; I beg your lordships to consider what a duty is here pressed, upon the peril of damnation, upon every man's conscience, that knows or believes that there was Resistance in the Revolution, and is conscious to himself of being any ways assisting, or even consenting to this damnable sin; and what must be the consequence if these doctrines, without any reserve or exception, are with impunity preached throughout the kingdom. All which, my lords, I hope, is sufficient to satisfy your lordships that Dr. Sacheverell is guilty of the charge exhibited against him in the First Article; and that he is an offender of that nature and malignity, that this Court only could be the proper judges of such high crimes; and from your lordships' justice, the Commons hope, That his punishment will be adequate to the heinousness of his offence.

Sir *John Hawles.* My lords, I am commanded by the Commons of Great Britain to be assisting to the gentlemen that spoke before me, for the proving the prisoner at the bar guilty of the crime charged in the First Article of his Impeachment; which is, That he did suggest and maintain, in his Sermon preached at St. Pauls, that the necessary means used to bring about the happy Revolution were odious and unjustifiable; and that his late majesty, in his Declaration, disclaimed the least imputation

of Resistance; and that to impute Resistance to the said Revolution, is to cast black and odious colours on his late majesty. In making good which Article against the Doctor, I hope the gentlemen that have spoke before me will excuse me, if I make use of another method than what they have done; which I shall do, not misliking the course they have taken, not that I think the method I shall take is better than theirs, but only because I would not repeat what is said by them, which, I am sure, would come with a worse grace from me, than it did from them; and because I am sure what was said is very well remembered by your lordships. What I shall offer, is, I think, somewhat to the purpose, and was not mentioned by the gentlemen before. As to the passages taken out of the Sermon to prove the Doctor guilty of the fact of this First Article, they have been so fully opened, and so very well applied, that I have very little to add to what has been said; I shall therefore only say, that the clause of his Sermon, wherein he asserts, that "The grand security of our government, and the very pillar on which it stands, is founded upon the steady belief of the subjects' obligation to an absolute and unconditional Obedience to the supreme power in all things lawful, and the utter illegality of Resistance upon any pretence whatsoever," he lays down not as a doctrine he would teach his congregation; but in order to draw an argument from thence for some other purpose; and what that is, appears plainly afterwards. For having alleged some things not proper for the occasion for which the day upon which he preached was solemnized, he adds, "Our adversaries think they effectually stop our mouths, and have us sure and unanswerable on this point, when they urge the Revolution of this day in their defence; but certainly they are the greatest enemies of that, and his late majesty, and the most ungrateful for their deliverance, who endeavour to cast such black and odious colours upon both. How often must they be told, that the late king himself solemnly disclaimed the least imputation of Resistance?" By which it is plain, that the position of the subjects' obligation to an absolute and unconditional obedience to the supreme power laid down, was only to shock and lay odious colours upon the Revolution, or the means whereby it was brought about; he knowing that the means whereby the Revolution was brought about was by force, and he knew it was so declared by the act of parliament made in the first year of king William and queen Mary, for preventing vexatious Suits against such as acted in order to the bringing in the late king and queen. And though he would insinuate that the same was not done by force, I must own he does not assert that either it was or was not done by force; but he strongly insinuates it was not done by force, when he asserts, though untruly, that the late king disclaimed any Resistance upon his coming. I will say nothing more as to that matter; and nothing as to that other, that has been largely opened, relating to the subjects' obligation to an absolute and unconditional obedience to the supreme power; the rather, because, if it was doubtful, the acts of parliament mentioned in the preface to the Articles, whereby the Revolution has been declared to be a glorious enterprize, and the means whereby it was brought about justified, have determined that matter; and because your lordships, as I think, will not suffer the Doctor, or his counsel, to say any thing against the Revolution, or the means whereby it was brought about.

The Commons of Great Britain own your lordships to be the supreme court of judicature in this government, but yet they think that acts of parliament, whereof your lordships are in part the makers, are as binding upon your lordships, as a court of judicature, as they are upon any court of Westminster-hall, where matters determined by act of parliament are never suffered to be disputed afterwards; but I own, what is practised in Westminster-hall is not a rule whereby your lordships ought to be governed, and therefore I rely only upon the reason of what I asserted; for although your lordships are the supreme court, and from whom no appeal lies to any other court of judicature, yet your lordships, as you are part of the legislature, are greater than you are in your judicial capacity, in which you are subject to the law; though in your legislative capacity, in concurrence with two other powers, you are above the law. It is therefore incongruous, that a court of persons of less power should judge otherwise than the court of greater power had determined; but this I submit to your lordships, and am sure the gentlemen of counsel with the Doctor know their duty so well in this matter, that they will not give your lordships the trouble of an admonition upon this occasion. I won't add more upon this subject, but proceed, with your lordships' permission, to prove the Doctor guilty of what he is charged with in this First Article, by the doctrine by himself laid down in his Sermon, and admit, for argument-sake, the same to be true; though this I must assert, that he carries the doctrine somewhat farther than the Apostles did in some respects, but in other respects seems to restrain it more than they did. In the restraining part he seems to confine the absolute and unconditional obedience to things lawful; which restraint looks like something, but in truth, upon examination, is nothing; for suppose the supreme power commands the subject to do something which it thinks is lawful, but the subject not willing to obey, pretending the thing to be unlawful, the true reasons being that they are chargeable, troublesome, hazardous, or the like; in this case who is to be judge, the supreme power, or the subject? In the reason of the thing, neither of them are proper judges; for the supreme power will be biassed, by reason of the command given by them at first, and will be ashamed to own what they commanded was unlawful, and therefore will

give judgment on their own side, to justify themselves in what they have commanded; and the subject will be as much biassed for the same reason that he was at first dissatisfied with the command. And there being no higher power or authority to appeal to than the supreme power, that must needs be the judge, from whom there can be no appeal. But perhaps the Doctor and I differ in the persons in whom the supreme power is lodged; for the Doctor has not mentioned thatmatter, either in his Sermon, or in his Answer to the Articles; but I hope, in the answer he is to give to what is now objected against him, he will tell us in whom that power is lodged. I will tell him in whom I think it is lodged; I think it is lodged in the queen's majesty, the Lords Spiritual and Temporal, and Commons in Parliament assembled: And I think when the acts mentioned in the Impeachment did pass (except the Act for declaring the Rights and Liberties of the Subject), the supreme power was lodged in the late king William and queen Mary, and the Lords Spiritual and Temporal and Commons in Parliament assembled. But as the Doctor seems to have restrained his doctrine of Non-Resistance, he has as much enlarged his doctrine of absolute Obedience; for, as I think, what hitherto written or asserted, upon the occasion of that matter, went no farther than Passive Obedience and Non-Resistance; but the prisoner's doctrine extends to active obedience as well as passive; because, as I think, the words of the Apostles, from whom this doctrine is taken, seems to restrain it only to Passive Obedience and Non-Resistance; and the reasons why the Apostles inculcated no other obedience, as I believe, was, because that was sufficient to secure the government under which the Apostles lived, which was the Roman government, and which stood in fear of no foreign force, and which government was said and believed could not be ruined but by its own subjects, which afterwards proved to be true. That that, their doctrine, was the doctrine of Christianity, and truly so called, I will readily agree to the prisoner; but I do not think that Christianity introduced that doctrine into the world; for I think, as the Doctor does, that it was as ancient as government, because it was impossible that government could subsist, unless supported by its subjects; but how ancient that doctrine was, cannot be asserted, without knowing how government came to be introduced into the world. If it was patriarchal, as some have asserted, it was as ancient as Adam; if it was introduced by conquest, then its date was no higher than Nimrod; if it was by compact, then I cannot say when it began; but this is certain, that it was as ancient as the Roman people, which was about seven hundred years before the coming of our Saviour; but how long before the Roman name was known, I cannot take upon me to say. But though this doctrine was not introduced by Christianity, yet I think it may well and properly be called the Christian doctrine; for though amongst the heathens it was a political law, and obliged (a other laws did) for fear of punishment; ye Christianity first pressed this doctrine upon th conscience of the subject, which no other re ligion did, and that was sufficient to intitle it t the name of Christian. But the Doctor as said, has carried it farther than the words o the Apostles did, extending it to an active obe dience, which the words of the Apostles do no warrant, in the strictness of the expressions But yet I will not contest with the Doctor in thi matter; for if the doctrine, as preached by th Apostles, was sufficient to secure the govern ment they lived under, as it was, and tha doctrine is not sufficient to secure the govern ment we now live under, as it is not; th Doctor might very well think, that what h now asserts, by the equity, as we call it, (tha is) the reason of the doctrine preached by th Apostles, was well warranted.

Having thus stated the matter of the subjects obedience to the supreme powers, in which have agreed with the doctrine set forth in th Sermon, I cannot imagine how the Doctor can justify himself in declaring against the Revo lution, as he has done; when he knows, a well as any, that the Revolution has been jus tified by the supreme power, in the acts of par liament mentioned: For certainly it must b granted that the doctrine that commands obe dience to the supreme power, though in thing contrary to nature, even to suffer death, whic is the highest injustice that can be done a man rather than make an opposition to the supreme power; because the death of one, or some few private persons, is a less evil than disturbing the whole government; that law must need be understood to forbid the doing, or saying any thing to disturb the government, the ra ther, because the obeying that law cannot b pretended to be against nature: and the Doctor' refusing to obey that implicit law, is the reason for which he is now prosecuted; though h would have it believed, that the reason he i now prosecuted, was for the doctrine he assert ed of Obedience to the supreme power; whic he might have preached as long as he ha pleased, and the Commons would have take no offence at it, if he had stopt there, and no have taken upon him, on that pretence or oc casion to have cast odious colours upon the Re volution. If he is of the opinion he pretends I cannot imagine how it comes to pass, tha he that pays that deference to the supreme power, has preached so directly contrary t the determinations of the supreme power i this government; he very well knowing tha the lawfulness of the Revolution, and of th means whereby it was brought about, has al ready been determined by the aforesaid acts o parliament; and do it in the worst manner tha he could invent. For questioning the right t the crown here in England, has procured th shedding of more blood, and caused more slaughter, than all the other matters tending to disturbances in the government put together If therefore the doctrine, which the Apostles

had laid down, was only to continue the peace of the world, as thinking the death of some few particular persons better to be borne with than a civil war; sure it is the highest breach of that law, to question the first principles of this government.

It is not forgotten how much blood was spilt upon the account of the title between the houses of York and Lancaster, in which the learned in the law did differ; and the setting on foot that question of the title of the present government, which was above twenty years ago determined, and that determination acquiesced in from that time till now, in all probability, if not suppressed, would tend to as great mischief as that war intailed on the nation. But yet the Doctor, who preaches up the subjects' submission to the supreme power, even to death itself, thinks he hath not only a licence, but a command from God, to enquire into the late king and queen's right to the crown; and to blow a trumpet, to set his fellow subjects to cut one another's throats upon that account. This surely is the absurdest construction of a text that ever was made; and yet this I will say is the case, if you will compare the prisoner's practice with his doctrine.

Methinks the Doctor ought to have considered what our Saviour and his Apostles did in their time: We do not find that any of them ever questioned the title of the emperors under whose government they lived; or ever said any thing relating to their titles, or that power they exercised; and yet if they had thought it lawful or expedient, they had just occasions to have done it. St. John, the survivor of the Apostles, lived (as it is said) to the time of Trajan; so that by that account he lived under thirteen emperors, including Augustus and Trajan; and yet neither of them had so much as a pretence of right to the empire, according to the opinion we have of that right now. The first and last of those emperors were the very best the Romans had, except perhaps Titus Vespasian; and yet Augustus came to the empire by the worst means of any of them, for he waded through a sea of blood, and was guilty of a great many acts of treachery and cruelty: But after the world had reaped so many benefits by his excellent government, it forgot the iniquity of the means whereby the empire was obtained. And the best means of obtaining the empire, by the following emperors, till the time of Titus Vespasian, were by force, and most of them by treacherous murders; and yet we do not find that either our Saviour or his Apostles, reproached any of those emperors with the injustice of the means whereby they became so. And methinks it would have become the Doctor to have followed those good examples. But the Doctor is of another opinion, and thinks the aforesaid words of Isaiah, to Cry aloud, &c. do well warrant that his opinion; not considering that that prophet had that express command from God, for reproving the hypocrisy of the Jews: And if the Doctor had the like command for preaching as he has done, I think he has quoted a good authority for so doing; but he must give us a better proof of such command than hitherto he hath done.

If he thinks the command given to Isaiah extends to him; how came it to pass that the Apostles did not think that the same command extended to them? Did not they live nearer the time of Isaiah? Were not they acquainted with the writings of Isaiah, as well or better than the Doctor, and so might have known the authority given to that prophet better than the Doctor? but yet forbore to do as the Doctor has done: And their having forborne so to do, cannot proceed from any other reason, than that they thought those words did not extend to the Apostles; or that they thought it was not lawful or expedient for them to question the title of those princes, or the justice or means whereby they obtained it.

I will only add to this matter, that if the Doctor had been contented with the liberty he took of preaching up the duty of Passive Obedience in the most extensive manner he had thought fit, and would have stopped there, your lordships would not have had the trouble, in relation to him, that you now have; but it is plain, that he preached up his absolute and unconditional obedience, not to continue the peace and tranquillity of this nation, but to set the subjects at strife, and to raise a war in the bowels of this nation; and it is for this that he is now prosecuted; though he would fain have it believed, that the prosecution was for preaching the peaceable doctrine of absolute obedience.

I cannot but take notice of the scandal the Doctor charges upon the late king, as if when he landed here, he had disclaimed all manner of imputation of Resistance; than which nothing is more untrue, even by his own confession in his Answer, and the words of the Declaration mentioned in the print of the Sermon, though no part of the Sermon; whereby he pretends to explain himself, by saying, he intended a disclaimer of Resistance in order to a conquest: than which nothing could be more absurd: For never was a conquest made, or ever will be made, by bare Resistance; nor ever was there a weaker thing charged upon a prince, than to make him disclaim all Resistance, at a time when he was actually making war: For his bringing an armed force of that number he did into this kingdom, with a great train of artillery with him, was making war by the law of nations, and then and now by the law of Great Britain: And he hath charged the prince of Orange with an act of the highest treachery, in pretending peace, when he actually made war.

The last matter I shall take notice of, are the words in the nineteenth page of the Doctor's Sermon; viz. "That old leaven of their forefathers is still working in the present generation; that this traditional poison still remains in this brood of vipers, to sting us to death, is sufficiently visible, as to the dangerous en-

croachment they now make upon our government, and the treasonable reflection they have published upon her majesty, God bless her! whose hereditary right to the throne they have had the impudence to deny and cancel, to make her a creature of their own power; and that by the same principles they placed a crown upon her, they tell us, they (that is the mob) may re-assume it at their pleasure." Now I think it cannot be doubted who it is the doctor means by the word Mob, which is the people of England: For though the word Mob is a cant word amongst a sort of people called Gypsies, and with them signifies the meanest, or the scum or dregs of the people, yet as the Doctor has used it in this place, it can signify nothing else than the body of the people of England; of whom, I think, your lordships do not think it beneath you to be thought a part, and the chiefest part: For he asserts, they say, that they placed a crown upon her majesty; and from thence makes an inference, that they may re-assume it at their pleasure; which can be intended nothing else than what was done in respect of her majesty by the Bill of Rights; wherein it is said, "That the Lords Spiritual and Temporal, and Commons in Parliament assembled, did declare her majesty after the death of the late king and late queen without heirs of her body, was lawful and rightful queen of this realm." Now, though her majesty hath an hereditary right and title to the crown, and so she is not so much concerned in the Declaration by the said act, as the last king and queen, in what that act conferred upon them, which was done only by the people of England, under the denomination of Lords Spiritual and Temporal, and Commons in Parliament assembled: And if that did not confer a title to the crown on the late king and queen, they, who were in their lives-time thought to be lawful and rightful king and queen of these realms, by the Doctor's reasoning, were no better than the usurpers of another's right. And though that Bill of Rights was afterwards confirmed by an act in the second year of their reign, yet that will not at all mend the matter; for if they did not obtain a right by the Bill of Rights, to the crown of these realms, they were no more king and queen of these realms, than they were before the said Bill of Rights. But the truth is, that when a government is brought out of frame, by the extraordinary steps of a prince, it is a vain thing to hope that it ever can be set right by regular steps; this never was done, nor ever will be done: But those methods which were necessary to set the government in a right frame again, have been always taken to be legal, though by the nicety of law it could not be well justified. Upon the change of government from Richard the 2nd, to Henry the 4th, the parliament called in the time of Richard the 2nd, and by his authority, continued to sit in the time of Henry the 4th, and passed several acts in the time of Henry the 4th; which was never practised before, nor warranted by any laws that we know of; yet what was done was allowed to be legal. To the same purpose was that which was done in the time of Henry the 7th: For he and those of his friends being attainted of high-treason, which, according to the rules of law at that time, prevented the descent of the crown on him; and his friends being mostly attainted, were uncapable of sitting in parliament till those attainders were reversed, which could not be done but by act of parliament, or the court of King's-bench; and he did not care to have a parliament, till his friends were capable of sitting there; nor could he make judges till he was king; which difficulty seemed to be insuperable: But the judges made a Resolution according to the exigence of the thing, and declared that sir William Stanley's placing the crown upon the earl of Richmond's head, purged his attainder, and he thereby became from thenceforwards king of England, and the king thereby enabled to constitute judges, and the judges to reverse the attainder of all the king's friends. It is true, Henry the 7th married the heiress of the House of York, and was thereby (as we now think) king in right of his queen; but he never would own her title to the crown, nor ever suffer her to join with him in any act of government, nor ever declared by what title he possessed the crown: but yet none of the acts passed in his time, nor any thing then transacted was afterwards questioned upon the account of his title to the crown. It is true, there was an act passed in his time, that indemnified such as should obey, or assist the king that was in being, whether he had right to the crown or no: But if he had not been allowed to be king before the passing of that act, the acts of parliament that passed in his time would have been of no more validity, than the acts passed in the time of Cromwell, or any other usurper. Whereby it is plain, that the Doctor now, and the persons who had the best knowledge of matters of this kind in those days, disagreed in opinion. And I cannot but take notice that the Doctor, notwithstanding his little knowledge in the matters he discourses of, makes the Declaration by parliament of the queen's title to the crown, to be the cancelling of her title by descent; and therefore he seems to advise her majesty to quit that title she claims from her people, and to rely upon her title by inheritance. Whereas, if the Doctor had but known what our laws allow, or if he had read any thing of this matter, he would have known that those titles did by no means disagree, but were consistent with one another; and that princes that sometimes have claimed by several titles, would not make their choice of which they relied on. Henry the 8th, who was heir of the House of York and Lancaster, never declared on which title he relied. Queen Elizabeth, after the death of her brother and sister, claimed as heir to Henry the 8th, and was likewise devisee of the government of England by the will of her father, who was (by act of parliament) enabled to give it by his will to whom he pleased: But notwith-

ending that she desired to have an act of parliament, which she had, declaring her to be the queen of England, &c. Which act of parliament was to the same purpose, as was the Bill of Rights in respect of her majesty's title to the crown. I will trouble your lordships with no more, to prove the prisoner guilty of the crimes charged upon him by the first Article of Impeachment; but I cannot but observe some aggravating circumstances of the prisoner's crime. As first, That the doctrine in the Impeachment was preached by a divine of the Church of England as by law established: For a divine of the Church of England is a person of that credit, that the people are ready to assent to what he says, without considering what the same is, or how made out. In the next place, it was preached in the cathedral church of the metropolis of this kingdom: Had it been preached in some obscure country town, it would have hardly been taken notice of. In the third place, it was preached before the lord mayor and court of aldermen of the city of London, and so far approved of by them, or some of them, as to be commanded to be printed; for which reason, what he preached hath done more mischief than otherwise it would have done; there having been about 40,000 printed, to vilify the Revolution, on which depend the security of the Protestant Religion both at home and abroad, and the succession of the crown in the Protestant line; the Union of the two kingdoms, the queen's bounty to the poor clergy, and several other benefits we enjoy by the Revolution; and amongst others, that her majesty was and is so peaceably possessed of the crown. For if the force before the Revolution, which suppressed her majesty's hereditary right to the crown, had not been removed by the Revolution, as it was, that her majesty's title would never have been able to have exerted itself: And if ever the Doctor, or any of his accomplices, should ever be able so to shock the Revolution, as to remove what is built upon it, I doubt that force which the Revolution removed, will return again, and oppress the queen's title to the crown as it did before.

I cannot pass by the Doctor's Answer to the Articles, without taking notice of one passage in the same, viz. "Hard is the lot of the ministers of the Gospel, if when they cite the word of God in their general exhortations to piety and virtue, the several texts by them cited, should be said to be by them meant of particular persons and things." Now I must submit to your lordships' judgment the unreasonableness of this complaint; and whether the several texts and passages cited by him in the Sermon, can bear any other construction than what has been made? and whether it be not the duty of the preacher to deliver himself so in the pulpit, that his meaning should not be doubtful to his congregation? The Commons of Great Britain do not go about to make him assent or swear to what the supreme power hath determined; though the Doctor in his Sermon has thought fit to impose matters of that kind upon other persons, so as to make them swear to them: No, the Commons of Great Britain would only have him restrained from publishing any thing, and especially in the pulpit, which reflects upon the supreme power; or what they have or shall determine, which even the nicest conscience never yet boggled at. I can add more aggravations of the Doctor's crimes, but will forbear to do it, rather following the example of the Commons of Great Britain; who have, indeed, demanded judgment against this person of your lordships, but they have done it in mercy; for they might have charged these matters against the Doctor as high-treason; and so it has been done in indictments against some divines, in a reign known to your lordships, for matters in their Sermons less heinous than those for which he is impeached; yet the Commons have called the matters of this Impeachment only High Crimes and Misdemeanors; and it is a rule in our law, that the Court in which a prosecution is had, cannot call the crimes greater than what the prosecutor thought fit to charge them, and cannot adjudge a greater punishment to the crimes than usual; but in some cases may lessen the punishment for such crimes; and whatsoever censure your lordships shall pass upon this criminal, the Commons of England will acquiesce, and be well satisfied with the same.

Major General *Stanhope.* My lords, the gentlemen who spoke before me to this Article, have said so much to it, that they have left little to me, who am last in it. I shall therefore particularly apply myself to make out to your lordships, that as the prisoner at the bar is guilty of the matter charged in this first Article, so he has done it (as the preamble of this Article sets forth) with a wicked and malicious intention to undermine and subvert her majesty's government, and the Protestant Succession, as by law established; to defame her majesty's administration; to asperse the memory of his late majesty, and to traduce and condemn the late happy Revolution, as in the same preamble to the Articles it is charged against him.

My lords, if it be truth, (as your lordships have been told by most of the gentlemen who went before me) that Non Resistance, asserted in general terms, does destroy the foundation of the Revolution, the present establishment, and her majesty's title to the crown, and the settlement of the Protestant Succession: if that be true, it is as true that the Doctor, who has advanced that doctrine in general terms, is guilty of that charge of intending to subvert the government: and then your lordships ought to proceed against him, as an enemy to the government.

What has been said by the gentlemen that spoke before me, concerning the doctrine of Non Resistance, has been said with so much regard to truth, to her majesty and her government, that I am persuaded, nothing that has been said on that subject can justly be misconstrued. But, on the contrary, to assert in ge-

neral terms the absolute illegality of Resistance, on any pretence whatsoever, (as this Doctor, and all the professed enemies of the government avowedly do) must be understood by all impartial and thinking people, to overthrow her majesty's title and government; since at the same time that they skreen themselves under the specious notion of professing absolute and Passive Obedience to the supreme powers, they cannot conceal their true meaning: that the true and real object of their darling doctrines, such as Jus Divinum, Non Resistance, the undefeasible, unalienable, hereditary right, that (I say) the true object of these doctrines, is a prince on the other side the water. They could not otherways be consistent with themselves. For in the same breath, in the same discourse, to preach passive unlimited obedience to magistrates, and to revile and defame the magistrates; to preach Non Resistance on any pretence whatsoever, and to encourage sedition, by inveighing in the strongest manner against the administration; these are such contradictions, as can no otherways be reconciled, no otherways than by concluding, what is very plain from their conduct, that however they are pleased to colour and disguise their discourses, their true end is only to disengage and alienate the people's affections from their present governors; to insinuate to them, that the foundation of the Revolution was wrong; that the Revolution itself was an usurpation; that whatever has been built upon that foundation, can have no weight; and to misrepresent those who had a hand in it, as rebels and traitors.

As to the doctrine itself of absolute Non Resistance, it should seem needless to prove by arguments, that it is inconsistent with the law of reason, with the law of nature, and with the practice of all ages and countries. Nor is it very material, what the opinions of some particular divines, or even the doctrine generally preached in some particular reigns may have been concerning it. It is sufficient for us to know what the practice of the Church of England has been, when it found itself oppressed. And, indeed, one may appeal to the practice of all churches, of all states, and of all nations in the world, how they behaved themselves when they found their civil and religious constitutions invaded and oppressed by tyranny: I believe one may further venture to say, that there is not at this day subsisting, any nation or government in the world, whose first original did not receive its foundation either from Resistance or compact: and as to our purpose, it is equal, if the latter be admitted. For wherever compact is admitted, there must be admitted likewise a right to defend the rights accruing by such compact. To argue the municipal laws of a country in this case, is idle. Those laws were only made for the common course of things; and can never be understood to have been designed to defeat the end of all laws whatsoever; which would be the consequence of a nation's tamely submitting to a violation of all their divine and human rights.

That there is a latitude left to the subjects in such a case, is allowed by the most strenuous advocates of Passive Obedience: and I shall, on this occasion, quote to your lordships the Sermon of a reverend divine, who, I am sure, is not thought to be a favourer of antimonarchical principles; nor to deserve any of those pretty epithets, which the Doctor so liberally bestows on those who differ from him in opinion. It is the Latin Sermon of Dr. Atterbury, preached to the Convocation. The scope and drift of that discourse, my lords, was to preach up absolute obedience; yet such is the invincible force of truth, and such the nature of this argument, that the Doctor, not to betray his own conscience, after having well thought upon it, is obliged to express himself in the following words, which your lordships will give me leave to read to you out of his Sermon, which I have here in my hand: "Quando autem, quibusq; de causis magistratuum imperia detrectare, Nosmetipsos in libertatem vindicare liceat, ne verbulo quidem indicant: nisi cum aliquid ab hominibus fortè imperatum fuerit, latis à Deo legibus contrarium. Id ubi acciderit, quid agendum sit, Petri vox illa declarat, Obedire oportet Deo magis quam hominibus."

The sense of this passage, my lords, if I mistake not, is this: "But when, and upon what causes it may be lawful to oppose the power of the prince, and assert our liberties, the Scriptures do not say: unless in cases when men shall command things contrary to the laws of God. When that shall happen, St. Peter tells us what we must do, We must obey God before men."

To apply this, my lords, to our present argument, I appeal to the memory of your lordships, whether king James did not command things contrary to the laws of God? whether his commands to the reverend fathers of our Church were consonant to the law of God? whether his commands to execute a dispensing power; whether his commands to all such of both Houses, as he could influence to vote for a dispensing power, contrary to their own consciences, were agreeable to the law of God? or, in short, whether the whole course of his reign was not a series of illegal commands, calculated to destroy our holy religion, and to violate all our religious and civil rights? Your lordships thought so (my lords); the Commons thought so; and the nation thought so; and in consequence of this doctrine, preached by St. Peter, they chose to obey God before men.

But to return to Dr. Atterbury's Sermon, he goes on thus, my lords: "Petenda sunt ista (si quidem peti necesse sit) à jurisconsultis, à thesium politicarum tractatoribus; è legibus, è rerumpublicarum formis, cuiq; genti proprii, tanquam è fonte suo, sunt haurienda." In English thus:

"But in such cases, you must advise with the lawyers, and those learned in politics; and have recourse to the laws and constitutions peculiar to each country, as to the springs and fountains of this knowledge."

My lords, in compliance to what is recommended by this reverend dean, I have endeavoured to follow his advice, to consult with those learned in the laws of nations and politics. I have heard that Grotius is of as good authority on those subjects as any that have wrote about them; that he has ever been reckoned a favourer of monarchy, and held in great repute amongst the divines of our Church. I shall beg leave, out of the many passages to be found in his excellent treatise de Jure Belli et Pacis, which support this argument, to quote only one, for the saving of your lordships' time. It is in his first book, the 4th chapter, and 13th section. "Si rex partem habeat summi imperii, partem alteram populus, aut senatus, regi in partem non suam involanti vis justa opponi poterit, quia eatenus imperium non habet: quod locum habere censeo, etiamsi dictum sit, belli potestatem penes regem fore; id enim de bello externo intelligendum est, cùm alioquin quisquis imperii summi partem habeat, non possit non jus habere eam partem tuendi."

The sense of this passage I conceive to be this: "If the king had one part of the supreme power, and that the other part is in the senate, or people, when such a king shall invade that part that doth not belong to him, it shall be lawful to oppose a just force to him, because his power doth not extend so far. Which position I hold to be true, even though the power of making war should be vested only in the king; which must be understood to relate only to foreign war: for as for home, it is impossible for any to have a share of the supreme power, and not to have likewise a right to defend that share."

This passage, my lords, is exactly adapted to the constitution of England; and the latter part of it is perfectly agreeable to what I have always heard quoted as a maxim of our law, That wherever there is a right, there is a remedy. That your lordships have rights, nobody will presume to deny; that the Commons have rights, nobody will deny; that every subject of Britain has rights, nobody will deny. Now to say, that when a prince shall invade all these rights at once; to say that the whole collective body of the nation has no way to vindicate those rights, is so inconsistent, so contrary to reason, that it is to be wondered it could ever enter into the mind of man.

If I did not fear to tire your lordships, I might, from many passages out of Fortescue,* and Mr. Hooker,† evince beyond contradiction, that the constitution of England is founded upon compact; and that the subjects of this kingdom have, in their several public and private capacities, as legal a title to what are their rights by law, as a prince to the possession of his crown.

Your lordships, and most that hear me, are witnesses, and must remember the necessities of those times which brought about the Revolution: that no other remedy was left to preserve our religion and liberties; that Resistance was necessary, and consequently just. It was then by no good man thought a black and odious crime to take up arms for the defence of his country. Many of your lordships were actors in that Resistance. The greatest part of the nation did either actually resist, or countenance, abet, and support those who set them the glorious example. I hope we have all so much gratitude to the best and greatest of queens, as to retain for ever a grateful memory, how great a share her majesty had in promoting that Revolution. When these facts are so fresh in our memories, what must we say to those who give the injurious names and epithets of Republicans, of Enemies and Traitors to Church and State, to those who were concerned in that Resistance which brought about the Revolution; Sure it might have become them to consider who were concerned, and who had a share in it. It is not only traducing the late king and queen, our glorious deliverers; it goes yet further: But I shall out of respect forbear to mention what they not only think, but have frequently the insolence to own.

My lords, if it be true that this doctrine of Non Resistance, asserted in so unlimited a sense as not to except the Revolution, does certainly sap the foundation of the said Revolution, and the present establishment which is built upon it; if it be true, that to arraign as guilty of black and odious crimes, all such as were concerned in the Resistance at the Revolution, doth involve the greatest part of this nation in the guilt of rebellion and treason; if it necessarily follows, from the same positions, that our allegiance is not due to the present government; I think we may as necessarily conclude, that this Sermon of the Doctor's before your lordships does tend, as is set forth in the preamble of the Impeachment, to undermine and subvert her majesty's government, and the Protestant Succession, which stands on the same foundation.

My lords, If the Doctor had in this Sermon only preached up obedience to the supreme power as a Christian duty, without meddling with politics, he might have been allowed perhaps to plead for excuse, that he was ignorant of the consequences that might be deduced from such general propositions; that his only aim was charity, peace, and submission to the magistrates in being. We must therefore pray your lordships to compare one part of his Sermon with the other; and your lordships will then, I am persuaded, be of opinion with us, not only that the conclusion we have drawn from his positions, does necessarily flow from them, but that the Doctor himself must have been conscious of it; and consequently that what he has done, must have been, as we set forth in our Charge, with a wicked and malicious intention.

* Fortescue de laudibus legum Angliæ, cap. 10, 11, 12, 13.

† Ec. Polity, pag. 86, 444, 446, 470.

Had the Doctor, my lords, in the remaining part of his Sermon, preached up peace, quietness, and the like; and shewn how happy we are under her majesty's administration; and exhorted obedience to it, he had never been called to answer a Charge at your lordships' bar. But the tenor of all his subsequent discourse, is one continued invective against the government. Passive Obedience is set down as an indispensible duty: but it is evident, by the whole Sermon, that it is not due to queen Anne, or her administration. Now what can that be, but to usher in a rightful title, (I think they call it) of one on the other side the water?

There is such an affinity, my lords, between this Sermon, and the doctrines which are preached and propagated by a certain set of men, that I cannot but observe to your lordships on this occasion, how industrious they have been, ever since the Revolution, to prepare a way for another. They are the pure and undefiled Church of England! The only men of loyal and steady principles! They never took the oaths to the government; never bent their knee to Baal! They have their own archbishops, bishops, and pastors, and constitute the only true and pure Church of England! We are all schismatics, that is, all the rest of England are schismatics, heretics and rebels! Now, pray, my lords, what are the peculiar and distinguishing characteristics, the favourite and darling tenets of these men? What else but Passive Obedience, Jus Divinum, an hereditary, indefeasible right of succession, which no necessity, no act of parliament, no prescription of time, no natural or legal incapacity can ever invalidate or set aside? If they are in the right, my lords, what are the consequences? The queen is not queen; your lordships are not a House of Lords, for you are not duly summoned by a legal writ; we are no House of Commons, for the same reason; all the taxes which have been raised for this twenty years have been arbitrary and illegal extortions; all the blood of so many brave men, who have died (as they thought) in the service of their country, has been spilt in defence of an usurpation; and they were only so many rebels and traitors.

My lords, if these Puritans (I think I may call them), these undefiled pure Church-men, would confine themselves to their own conventicles, to get money from a few deluded women; it may, perhaps, be consistent with the indulgence of the mildest of governments, to suffer them to enjoy the benefit of that Toleration which is allowed to Protestant Dissenters, how pernicious and destructive soever to the public may be their principles. But when they shall come and vent their treasons abroad; when they shall occasionally conform, and take the oaths to the government, in order the better to destroy it; when they shall abjure the pretended prince of Wales, but not forget him; when they shall invade the pulpits of the true Church of England; when the pulpit of your metropolis, instead of teaching the people to pay their anniversary tribute of praise and thanks to Almighty God for the many wonderful successes with which he has blessed those arms which were taken up in defence of the Revolution; when (I say) that pulpit shall be prostituted and polluted by venting sedition against the best of queens; it is high time for your lordships to animadvert upon it, for the honour of those glorious princes who are dead; for the honour of her majesty, who so happily rules over us; and for the peace and tranquillity of all her subjects.

My lords, if I was not afraid of being thought too tedious to your lordships, I would offer to you a few words concerning that administration which the Doctor has so maliciously defamed; for as fond as this gentleman, and those like him, are of meddling with politics in the pulpit; and, as himself expresses it, of setting the people right in their principles; I do not find they ever teach what the ends of government truly are.

My lords, Tully [Oratio pro Publio Sectio,] who takes it from Aristotle, states the ultimate end of government, and the mark which rulers ought to aim at, to be *otium cum dignitate*, or peace with reputation. Towards attaining this end, he enumerates the several particulars which it requires the greatest application and vigilance of good governors to promote and maintain. And the chief branches, as he states them, are religion; the just and legal powers and rights of the legislative, and of the magistrates subordinate to that; a due administration of justice; the public treasure and credit; military virtue; and concludes with *laus publica*; which, indeed, is the result of a good administration of the several branches mentioned. For praise both at home and abroad will never fail to attend good management.

Now, my lords, if any man will but reflect on every one of these particulars, and instances when in any age there has been in this island a more universal glorious administration, I will allow what the Doctor says to be true.

To begin with religion, my lords, let any one look upon that reverend bench, and say when it was ever filled with greater examples of piety, learning, and Christian charity. That truly Christian moderation, and extensive zeal, and charity to the Protestant religion, will, in all human probability, my lords, (if ourselves, by little animosities, do not obstruct it) will, I say, raise the lustre and reputation of our Church to such a degree, that, as the glory of our arms justly intitles our nation at present to hold the first rank, so shall our Church be looked upon as the Mother of all the Reformed Churches in Europe.

As to the just rights and powers of our legislative, your lordships and all of us know, whether ever any prince on our throne has had a more tender concern for them than her

majesty; or whether, at any time, there has been a more due and impartial administration of justice.

For the treasure and credit of the nation, I appeal to all that hear me, whether ever such large sums were more cheerfully given, or more justly administered. Never were there greater demands than during this necessary war, nor ever demands more freely complied with by the people. Such is the confidence they have in the public management, and so ineffectual this Doctor, and his brethren sounding a trumpet to sedition.

As for our arms and reputation; the many unparallaled successes, during her majesty's reign, by sea and land, speak sufficiently, and do sufficiently proclaim, that her majesty has far exceeded all her predecessors. Our Henrys and our Edwards have justly left behind them immortal fame, for having broke and subdued in their times the power of France. Queen Elizabeth will be ever glorious for having humbled the pride of Spain. Those two great monarchies have each in their turn aimed at the universal monarchy of Europe; and each hath been near compassing it, notwithstanding that the one always opposed the other. But it was never imagined, that if they once became united, any force in Europe could have disputed with them. Yet, my lords, we have lived to see those two formidable powers united, and threatening destruction to all the liberties of Europe. It was a task reserved for her majesty to encounter this united force. She has attacked and reduced them to sue for peace; and we are perhaps just now at that very decisive period of time, when we are to reap the fruits of a long and expensive war, by the conclusion of a solid and lasting peace.

Now, my lords, at such a critical juncture, at a time when it behoves us more than ever to preserve that union amongst ourselves, upon which the union of the whole alliance does so much depend; upon which the happy conclusion of this war, and consequently the safety and honour of our Church and State does depend; what does this pious son of the Church! What does this loyal subject, this Passive Obedience gentleman do? He is preaching to the city of London, from whence we are to receive the greatest part of the supplies granted for carrying on the war: does he say one word to them to promote and carry on the public good? No, my lords: he does, to the utmost of his ability, endeavour to create in them groundless mistrusts and jealousies of the administration. And I will appeal to the conscience of every one that hears me, and desire, that laying their hand upon their heart they will truly determine within themselves, whether, if those citizens who heard this Sermon had been biassed by it, we could have expected one penny of money from them, to support a government which was represented as vicious? But those honest citizens, my lords, heard this trumpeter of sedition with indignation. Their affection to the government is not to be shaken. Her majesty is absolute in the hearts of her subjects; which is the best way of being absolute; and all the artificial suggestions of these False Brethren (to use his own language) will never lessen their affections to her.

But, my lords, how impotent and weak soever the malice of these men may prove; yet when such doctrines are broached, and publicly preached, as tend to enslave a free nation, to foment divisions and parties, to seduce us from our allegiance to the best of princes; it becomes the House of Commons, who are guardians of the constitution and liberties of the people, to bring such delinquents to justice; and it will become your lordships, who are guardians of the constitution of the people, to prevent the growing of such an evil. This man, my lords, is an inconsiderable tool of a party, no ways worth the trouble we have given your lordships: but we look upon it that your lordships' judgment in this case, will be giving a sanction which shall determine what doctrines of this kind shall, or shall not be preached. We are persuaded, therefore, that your lordships, in giving judgment on this case, will have a regard to the honour of the late king and queen, so highly aspersed; to the security of her majesty and her government; to the Protestant Succession; to the preservation of the peace at home, and reputation abroad; where, if it shall be heard that you have men amongst you insolent enough to vent such notions, they may likewise hear that it has not been done with impunity. For all these reasons, we do hope that your lordships will inflict such condign punishment on this offender, as may deter others from the like insolence for the future.

Sir Peter King. My lords, the gentlemen who have gone before me having finished the first Article of the Impeachment, by command of the House of Commons I proceed to make out the second, which relates to the Toleration, one of the principal consequences of the Revolution. It is well known that great severities had been formerly used against Protestant Dissenters, which were fomented by Popish practices, in order to divide us, and thereby weaken the common Protestant interest, and particularly that of the Church of England: this the whole Church of England plainly saw in the reign of the late king James, when Popery was coming in like a flood, and threatened an universal ruin; and when they did universally profess their readiness and intention to shew all manner of tenderness to other Protestants, when it should be in their power to do it.

The Seven Bishops, who, to their everlasting honour, made so noble a stand for the liberties of the Church and kingdom, did, in their petition to king James, declare, That their not reading the Declaration for Liberty of Conscience, was not from any want of due tenderness to the Dissenters, in relation to whom they were willing to come to such a temper as should be thought fit, when that matter should be consi-

dered, and settled in parliament and convocation.

And to the glory of the Church of England it must be remembered, that when the Revolution was afterwards effected, they were as good as their word, and an act passed in the very first year of their late majesties king William and queen Mary, intitled, "An Act for exempting their majesties Protestant subjects, dissenting from the Church of England, from the penalties of certain laws." This is that act that is commonly called the Act of Toleration, and was confirmed by another act made in the succeeding parliament. As this act is agreeable in itself to the profession of the Christian religion, and particularly to the doctrine of the Church of England; so it hath been found, by experience, so much for the honour of the kingdom, and for the credit of the Church, that her majesty has been pleased to declare from the throne her intention inviolably to maintain it; and both Houses of Parliament have done the same in the most solemn manner.

Here the duke of Buckingham moved the Lords to adjourn to their own House; which they did: and the Lords being returned to the Court, and proclamation commanding silence made:

Lord Chancellor. Gentlemen, you that are the Managers for the House of Commons may proceed in the method you were in.

Sir *Peter King.* My lords, the act of parliament that I was mentioning to your lordships, is the act relating to the Toleration, referred to in the preamble to the Articles; your lordships, and every one else, remember the necessity there was for that act; and having experienced the benefit of it, her majesty and both Houses of Parliament have concurred in a declaration, that that act shall be inviolably observed: this being then not only a positive law, but also a beneficial one, as well for the benefit of the Church in particular, as the welfare and support of the Protestant interest in general, it very ill became any private person to endeavour to bring that law, by any public discourse, into contempt or disrepute.

The Article the Doctor is charged with in relation hereto, is, "That he suggests and maintains, that that Toleration granted by law is unreasonable, and the allowance of it unwarrantable; and asserts, that he is a False Brother, with relation to God, Religion and the Church, who defends Toleration and Liberty of Conscience; that queen Elizabeth was deluded by archbishop Grindall, whom he scurrilously calls a false son of the Church, and a perfidious prelate, to the Toleration of the Genevian discipline; and that it is the duty of the superior pastors to thunder out their ecclesiastical anathemas against persons intitled to the benefit of the said Toleration, and insolently dares and defies any power on earth to reverse such sentences."

My lords, the first part of this Article, which is the principal part, contains a general charge against the Doctor, for affirming and maintaining, "That the Toleration granted by law is unreasonable, and the allowance of it unwarrantable." The rest of the Article consists of particular passages, taken out of his Sermon, tending to make good and prove that general charge.

As to the general charge contained in the first part of this Article, of his maintaining the Toleration granted by law to be unreasonable, and the allowance of it unwarrantable: his Answer is very observable, and is, That upon the most diligent enquiry, he has not been able to inform himself that a Toleration hath been granted by law; but admits, that an act did pass in the first year of king William and queen Mary, intitled, "An Act for exempting their majesties Protestant subjects, dissenting from the Church of England, from the penalties of certain laws." Which exemption, he saith, he doth not any where maintain to be unreasonable, or the allowance of it unwarrantable; but hopes that he had prevented any such misapprehension, by declaring in his Sermon preached at St. Paul's, that he intended not to cast the least invidious reflection upon that indulgence which the government had given.

Indeed, it is almost difficult to be serious in giving a reply to that part of his Answer, that he cannot inform himself that a Toleration hath been granted by law. It is true the word Toleration is not mentioned in that act, neither is the word indulgence to be found in that law; but every body knows, that the exemption granted by that act is commonly called The Toleration, and the act itself, The Toleration Act: what is the intent of that act but to tolerate and allow persons, qualified by that act, to exercise their religion, notwithstanding penal laws to the contrary? Toleration is really a word of less import than indulgence, it is a bare permission, and allowance; and this word has gained such a known and fixed notion and signification in every one's mind, that whenever it is mentioned, there is not any doubt what is meant by it: it is now become a word of art, that not only in common conversation, but even in the most public acts of state, the exemption granted by the act made in the 1st of king William and queen Mary, is called The Toleration. Did not her majesty in her Speech to both Houses of Parliament from the throne, in the year 1705, declare that she would always inviolably maintain the Toleration? Did not both Houses of Parliament, in their several Addresses to her majesty for that most gracious Speech, express their deep satisfaction of her majesty's resolution to maintain The Toleration? In the free conferences between the Lords and Commons about the Bill for preventing Occasional Conformity, in the year 1702, is not this act of the 1st of William and Mary called the Act of Toleration, and the exemption granted by that act called The Toleration? So that it seems strange the Doctor

should not know that a Toleration had been granted by law; and it is more strange yet, that he himself, in this very Sermon, called the indulgence granted by that act The Toleration.

In the 14th page of his Sermon, where he is complaining of False Brethren in the kingdom, who are permitted and suffered to combine into bodies and seminaries, wherein Atheism, Deism, Tritheism and Socinianism, and a great many other wicked principles are taught; he concludes thus, "certainly, (says he) The Toleration was never intended to indulge and cherish such monsters and vipers in our bosom." What was it possible for the Doctor to mean in that place, by The Toleration, but the indulgence, as he calls it, granted to the Dissenters by the act of 1 Gul. & Mar.?

In the 19th page of the Sermon, speaking of the Dissenters, he says, "now they have advanced themselves from the religious liberty our gracious sovereign has indulged them, to claim a civil right, as they term it, and to justle the Church out of her establishment, by hoisting their Toleration into its place." What could he possibly mean here by these words, but that Toleration, or that indulgence, which was granted in the time of the king and queen to the dissenters? So that it is plain, that when he made, and preached, and published this Sermon, he knew very well, that that indulgence that was granted by the law made in the first year of king William and queen Mary, was commonly called The Toleration; and this Toleration, granted by that law, is that which the Commons in their Impeachment say, he maintains to be unreasonable, and the allowance of it unwarrantable; and this is what I am now to make out and prove.

But I must do the Doctor justice to own, that page 20 of his Sermon preached at St. Paul's, he doth use these words, referred to by him in his Answer, viz. "I would not here be misunderstood, as if I intended to cast the least invidious reflection upon that indulgence the government has condescended to give them; which I am sure all those that wish well to our Church, are very ready to grant to consciences truly scrupulous; let them enjoy it in the full limits the law has prescribed."

The Doctor, by putting in that caution, seems himself to be apprehensive, his words were otherwise in danger to be esteemed a reflection upon that indulgence or Toleration that the government had given. Having just before commended the severities that were used in the reign of queen Elizabeth against the Dissenters; which could not be spoken in commendation of the Toleration, but would reasonably be understood to be a commendation of it, because it removed and took away those severities; he then subjoins the fore-mentioned passage; which dry caution will not excuse the Doctor, if in the other parts of his Sermon he doth visibly and plainly condemn the Toleration, and censure it as unreasonable, and the allowance of it unwarrantable; which that he doth, I shall endeavour to prove from other direct and formal passages in his said Sermon.

The first passage that I shall cite to this purpose is in the 10th page of the Sermon, and is in these words. "So that in all those cases before-mentioned, whosoever presumes to innovate, alter, or misrepresent any point in the articles of the faith of our Church, ought to be arraigned as a traitor to our State; heterodoxy in the doctrines of the one naturally producing, and almost necessarily inferring rebellion and high treason in the other, and consequently a crime that concerns the civil magistrate, as much to punish and restrain, as the ecclesiastical." The beginning of this passage is tied up to the cases before-mentioned, "so that in all those cases before-mentioned," which being a term of relation, must be expounded in reference to what went before.

This passage is contained in his second head of False Brethren, of those who are False Brethren with relation to the state, government, or society of which they are members. And on perusal thereof, I do not find any one article of the faith of our Church before-mentioned under that head, to which these relative terms do refer; for all that he saith before under that head is, "That the constitutions of most governments, differing according to their several frames and laws upon which they are built and founded, it is impossible to lay down any one universal rule, as the scheme and measure of obedience, that may square to every one of them: only this maxim in general, he presumes, may be established for the safety, tranquillity, and support of all governments, That no innovation whatsoever should be allowed in the fundamental constitution of any state, without a very pressing, nay, unavoidable necessity for it; and whosoever singly or in a private capacity should attempt it, is guilty of the highest misdemeanor, and is an enemy to that politic body of which he is a member."

Then the Doctor applies this maxim to our government: "Our constitution, saith he, both in Church and State, has been so admirably contrived, with that wisdom, weight and sagacity, and the temper and genius of each so exactly suited and modelled to the mutual support and assistance of one another, that it is hard to say, whether the doctrines of the Church of England contribute more to authorize and enforce our civil laws, or our laws to maintain and defend the doctrines of our Church. The natures of both are so nicely correspondent, and so happily intermixt, that it is almost impossible to offer a violation to the one, without breaking in upon the body of the other: so that in all those cases before-mentioned, whoever presumes to alter, innovate, or misrepresent any point in the articles of the faith of our Church, ought to be arraigned as a traitor to our State," &c.

I read your lordships this whole paragraph, to shew, that the cases said to be before-mentioned, are not contained in this head of the

Sermon, but they are plainly contained in a former paragraph, viz. in his first head of False Brethren, with relation to God, Religion, and the Church in which they hold communion; under which head the Doctor enters into a long description of such kind of False Brethren, and enumerates several articles and rites of the Church, the disbelievers or deniers whereof are termed False Brethren; and amongst other of his characters, in p. 8, he brands him for being false to the interest of the Church, that gives up any point of her discipline and worship; these are the exterior fences to guard the internals of religion, without which they are left naked, without beauty, order, or defence. Should any man, out of ignorance or prejudice to the ancient rights and essential constitution of the Catholic Church, affirm, "That the divine apostolical institution of episcopacy is a novel doctrine, not sufficiently warranted by Scripture, and that it is indifferent whether the Church be governed by bishops or presbyters:" is not such an one an apostate from his own orders? So that one of the before-mentioned cases of False Brotherhood is, the affirming that the divine apostolical institution of episcopacy is a novel doctrine, not sufficiently warranted by Scripture, and that it is indifferent whether the Church be governed by bishops or presbyters. This is affirmed and held by all the Dissenters; and though they should be mistaken in their opinion, yet still it is their opinion; and they are notwithstanding tolerated, and are exempted by the Toleration act from subscribing the 36th Article, that the book of consecration of archbishops and bishops, and of the ordination of priests and deacons, set forth in the times of king Edward the 6th, contain in it all things necessary to their consecration and ordination, and hath nothing in it either superstitious or impious: now, notwithstanding this innovation or alteration of this Article of the Church by the Dissenters, the law doth nevertheless tolerate and indulge them.

But the Doctor is of another opinion, and he affirms, that whoever innovates, alters, or misrepresents this point in the articles of the faith of our Church, ought to be arraigned as a traitor to the State, and ought to be punished, as well by the temporal as the ecclesiastical magistrate. For he goes on, and carries it a great deal further, by the reason he gives for his assertion, which is, "heterodoxy in the doctrines of the one naturally producing, and almost necessarily inferring, rebellion and high treason in the other; and consequently a crime that concerns the civil magistrate as much to punish and restrain, as the ecclesiastical." Here is an assertion to the purpose; that heterodoxy, that is, the holding a different opinion from any article of the faith of our Church, naturally produces, and almost necessarily infers rebellion and high treason in the State, and consequently a crime that concerns the civil magistrate to punish, as well as the ecclesiastical. He himself, in the immediate subsequent words, doth own, that this assertion at first view may look like an high-flown paradox; and I believe it will still appear to be so upon a review, That whosoever is of a different or other opinion, in any of the articles of the faith of the Church, is guilty of high treason; and the temporal as well as the spiritual magistrate ought to punish him as a traitor for it. The Articles of the Church are in number 39; some of the Dissenters are by the Act of Toleration exempted from subscribing three and a half of them, viz. the 34th Article, which relates to the traditions and ceremonies of the Church, and the power of the Church to ordain, change, and abolish ceremonies and rites: the 35th Article, concerning the book of homilies, and reading of them in churches: the 36th Article, concerning the consecration of archbishops and bishops, and the ordination of priests and deacons; and the former part of the 20th Article, which asserts the power of the Church to decree rites and ceremonies, and authority in controversies of faith. Other Dissenters, who scruple the baptizing of infants, are also exempted from subscribing that part of the 27th Article, which relates to infant baptism; and the Quakers are exempted from subscribing any of the Articles, and are only required to subscribe a short declaration of the Trinity, and that the Scriptures are given by divine inspiration. All these several sorts of Dissenters, notwithstanding their heterodoxy in these points, are exempted by the Toleration Act from the penalties of the former laws, and are by this Act preserved in the free exercise of their religion or worship; and not only the penalties inflicted on them by former laws are taken away, but several immunities and privileges are given them, as an exemption of their teachers from parish offices, and a penalty for disturbing their congregations. Now, when this is established by a law, and that Act of Toleration is in full force; for the Doctor to affirm, notwithstanding all this, that heterodoxy, or a different opinion from any of the articles of faith of our Church, almost necessarily infers rebellion and high treason in the state, and is a crime that concerns the civil magistrate to punish, as well as the ecclesiastical; what can be a more direct breaking in upon, and disavowing of the Toleration than this? Is not this to maintain the Toleration granted by law to be unreasonable, and the allowance of it unwarrantable?

Another passage that I shall cite to prove the general charge against the Doctor, is in the 16th and 17th pages of the Sermon: "What could not be gained by comprehension and Toleration, must be brought about by moderation and Occasional Conformity; that is, what they could not do by open violence, they will not fail by secret treachery to accomplish. If the Church cannot be pulled down, it may be blown up; and no matter with these men how it is destroyed, so that it is destroyed." In this place the Doctor is speaking of the great mischiefs and perils of his False Brethren to the Church. And to prevent any mistaken notions of the Church, he intimates, that we

are to understand the true genuine notion of it, as it stands contradistinguished in its established doctrine, discipline and worship, from all other churches and schismatics, who would obtrude upon us a wild negative idea of a national church, so as to incorporate themselves into the body as true members of it; whereas that latitudinarian, heterogeneous mixture would render it the most absurd, contradictory, and self-inconsistent body in the world: and from thence he proceeds to shew that this design of a comprehension miscarried, and that that long projected scheme of the ecclesiastical Achitophels was blasted: "But," says he, "since this model of universal liberty and coalition failed, and these False Brethren could not carry the Conventicle into the Church, they are now resolved to bring the Church into the Conventicle, which will plausibly and slily effect her ruin." And how is that to be done? Why, "what could not be gained by comprehension and Toleration, must be brought about by moderation and Occasional Conformity; that is, what they could not do by open violence, they will not fail by secret treachery to accomplish; if the Church cannot be pulled down by comprehension and Toleration, it may be blown up by Occasional Conformity and moderation; and no matter with these men how it is destroyed, so that it is destroyed." Is not this calling the Toleration an open violence to the Church? That it was an attempt made to destroy the Church, though the Church itself came into, and settled this Toleration? I say, the legislature in the time of their late majesties king William and queen Mary, and particularly the bishops, the fathers of the Church, were very well satisfied that this Toleration granted to the Dissenters, was no way prejudicial to the safety and security of the Church. Now for the Doctor to come and say, the Toleration was intended to pull down the Church, and that it is an open violence to the Church; is not this to maintain, that the Toleration is unreasonable, and the allowance of it unwarrantable?

My lords, these passages which I have cited to your lordships, do prove the general charge of this Article: There are other passages in the Sermon particularly referred to in the Article, which likewise prove this general charge, to which I shall next proceed. And,

The next part of the charge in the second Article is, That he asserts, that he is a false brother, with relation to God, Religion, or the Church, who defends Toleration and Liberty of Conscience.

These words are contained in so many express terms in the eighth page of his Sermon, where, after he had copiously described his False Brethren, he comes and sums up the whole in these words: "If upon all occasions to comply with the Dissenters both in public and private affairs, as persons of tender consciences and piety, to promote their interests in elections, to sneak to them for places and preferment, to defend Toleration and Liberty of Conscience, and under the pretence of moderation to excuse their separation, and lay the fault upon the true sons of the Church for carrying matters too high: if to court the Fanatics in private, and to hear them with patience, if not approbation, rail at and blaspheme the Church, and upon occasion to justify the king's murder; if to flatter both the dead and the living in their vices, and to tell the world, that if they have wit and money enough they need no repentance, and that only fools and beggars can be damned; if these, I say, are the modish and fashionable criterions of a true Churchman, God deliver us from all such False Brethren!"

So that one mark of these False Brethren, in this part of his Sermon, is to defend Toleration and Liberty of Conscience. As to this, the Doctor gives two answers, one by way of inference or presumption, and the other direct; that by way of inference is, "That he having so plainly declared himself in favour of the exemption granted by law; when he blames those who upon all occasions defend Toleration and Liberty of Conscience, he cannot be thought to reflect on the defenders of that legal exemption or indulgence, which he himself approves and defends."

Now, if he had not in other parts of his Sermon condemned the Toleration expressly, it might have passed for an answer. But now, if the Doctor has more than once in other parts of his Sermon directly inveighed against this Toleration, then his meaning is more naturally to be understood by so many several passages, than by one single sentence, and with what view thrown in, the reading of the Sermon will plainly shew. And therefore the true way to come at the true meaning of his words, is to take them as they stand in his Sermon; and that is what your lordships will judge by. In the next place, he gives a direct Answer to this part of the charge, which is, that he does not mean by this description of a False Brother, those who only defend Toleration and Liberty of Conscience, and do no more; but he only blames those who upon all occasions defend Toleration and Liberty of Conscience, and to excuse their separation, lay the fault upon the true sons of the Church for carrying matters so high; so that I do not reckon him, says he, as a False Brother who barely defends Toleration and Liberty of Conscience; except that at the same time that he is defending Toleration, he lays the fault of the separation upon the true sons of the Church for carrying matters too high. Now I submit to your lordships upon reading of this passage, whether it is capable of such an interpretation? If it be looked into, it will be found that the several particular characters there mentioned, are all of them so many particular marks of a False Brother; it is not necessary that two, or three, or all of them meet together in one person to make up the character of a False Brother; but if any one of them be found in any person, it is sufficient to characterise him a False Brother:

whoever is guilty of any one of these acts, of which defending Toleration is one, is a False Brother; and his asserting the defending of Toleration to be a mark of a False Brother, is an evident declaration against the justice and expediency of the Toleration.

The next particular charge upon him in this Article is for asserting, "That queen Elizabeth was deluded by archbishop Grindall, whom he scurrilously calls a false son of the Church, and a perfidious prelate, to the Toleration of the Genevian discipline." This charge upon him is founded on those words of his Sermon, in the 19th page; these are his words: "Have they not, ever since their first unhappy plantation in this kingdom, by the intercession of that false son of the Church, bishop Grindall, always improved, and rise upon their demands in the permission of the government? Insomuch that queen Elizabeth, that was deluded by that perfidious prelate to the Toleration of the Genevian discipline, found it such an headstrong and incroaching monster, that in eight years she foresaw it would endanger the monarchy, as well as the hierarchy; and, like a queen of true resolution, and pious zeal for both, pronounced, that such were the restless spirits of that factious people, that no quiet was to be expected from them, until they were utterly suppressed: which, like a prudent princess, she did by wholesome severities, that the crown for many years sat easy and flourishing on her head."

As to that part of the Charge, where he says, that queen Elizabeth was deluded to the Toleration of the Genevian discipline by archbishop Grindall, the Doctor's Answer is, "That he humbly conceives he hath good authority from the histories and monuments of those times for such assertion; but whether he hath, or hath not, humbly apprehends such assertion to be no proof of his maintaining or suggesting, that the exempting of Protestant subjects dissenting from the Church of England from the penalties of certain laws, granted by an act made in the first year of the reign of king William and queen Mary, (which exemption he supposes to be intended by the legal indulgence, or Toleration granted to Dissenters, mentioned in the preamble of the Articles, and by the Toleration granted by law mentioned in this second) is unreasonable, or the allowance of it unwarrantable."

My lords, it might not perhaps be difficult to shew that there are some mistakes in this fact; but whether there be or no, will not now be worth spending your lordships' time; for I do agree with him, that the material point is what he puts it upon, whether this assertion, as printed and delivered by him in his Sermon, be a censure or condemnation of the Toleration act; Now whether it be so or no, will appear by taking the whole clause together. This passage is in the 19th and 20th pages, and is in that part of his Sermon where he is shewing the great perils and mischief of his False Brethren to the state, and that they are destructive to our civil rights and liberties; and in the pursuit of his argument he plainly shews, that the False Brethren there meant are the Dissenters, who are tolerated by this act of parliament. "These False Brethren, says he, have now advanced themselves from the religious liberty our gracious sovereign has indulged them, to claim a civil right, and to justle the Church out of her establishment, by hoisting their Toleration into its place." So that it is plain, these False Brethren here spoken of are the Dissenters, those who have the benefit of the Toleration Act. And then he goes on: "And to convince us what alone will satisfy them, insolently demand the repeal of the Corporation and Test Acts, as an ecclesiastical usurpation, which indeed under her majesty (whom God long preserve for its support and comfort) is the only security the Church has to depend upon; and which they have so far eluded by their abominable hypocrisy, as to have undermined her foundations, and endangered the government, by filling it with its professed enemies. These charges are so flagrant and undeniable, that a man must be very weak, or something worse, that thinks or pretends the Dissenters are to be gained or won over by any other grants and indulgences, than by giving up our whole constitution: And he that recedes the least tittle from it, to satisfy or ingratiate with these clamorous, insatiable, and church-devouring malignants, knows not what spirit they are of, or he ought to shew who is a true member of our Church."

These passages I have read to your lordships, to shew that these False Brethren here spoken of are the Dissenters, who are now tolerated by the law granted to them in the time of their late majesties king William and queen Mary; and of these Dissenters follows this passage: "Have they not, ever since their first unhappy plantation in this kingdom, by the intercession of that false son of the Church, bishop Grindall, always improved, and risen upon their demands in the permission of the government? Insomuch that queen Elizabeth, that was deluded by that perfidious prelate to the Toleration of the Genevian discipline," *id est*, the discipline and policy of the Dissenters, so called because taken from Geneva, "found it such a headstrong and encroaching monster, that in eight years she foresaw it would endanger the monarchy, as well as the hierarchy; and, like a queen of true resolution and pious zeal for both, pronounced, that such were the restless spirits of that factious people, that no quiet was to be expected from them, till they were utterly suppressed; which, like a prudent princess, she did by wholesome severities, that the crown for many years sat easy and flourishing on her head."

In this memorable passage he represents archbishop Grindall as a false son of the Church, and a perfidious prelate, for deluding the queen into a Toleration of the Genevian discipline. Whether that fact be true, or not, is not ma-

trial to our purpose; but this is, that he charges it for a fault on the archbishop, and for which he calls him a false son of the Church, and a perfidious prelate, for inducing the queen to give a Toleration to the Dissenters in those days: The fault is not, that it was a regal Toleration only, but the fault was in the Toleration itself, in consenting to a liberty to the Dissenters. Now what is this in effect, but to preach to the whole world that the Parliament are in the wrong to grant a Toleration to the Dissenters; That the Lords and Commons, who consented to the Toleration, are not true sons of the Church; And that the bishops, who are for tolerating the Dissenters, are neither fathers nor sons of the Church, but corrupt and perfidious prelates!

That this character of archbishop Grindall was designed for a censure of the present Toleration, will appear more fully by the contrary character he gives of queen Elizabeth; he commends her resolution and pious zeal for "the monarchy and hierarchy, in declaring, that no quiet was to be expected from the restless spirits of that factious people, till they were utterly suppressed; which, like a prudent princess, she did by wholesome severities, that the crown for many years sat easy and flourishing on her head." Now what can the English of all this be, but to inflame the government against the Dissenters? What could be said more prevalent for this purpose, than to recommend it as a noble resolution and pious zeal in queen Elizabeth, utterly to suppress the Dissenters? And if that resolution be to be followed, the legislature must repeal the Toleration Act. And what could be said more contrary to the Toleration act, than to recommend the severities used in queen Elizabeth's reign, because they were wholesome in themselves, and of happy consequence to the person and government of that renowned queen? If there were not a necessity for it on this occasion, I would not mention what those wholesome severities were, but rather cast a veil over that part of the reign of that great and glorious queen.

To give a short view of these wholesome severities; some heretics were burnt, other persons were hanged, some had their goods confiscated, others had their persons imprisoned; and to mention more particularly a public act in writing that cannot be falsified or misrepresented, and which is since relaxed by the Toleration Act, an Act passed in the 35th year of queen Elizabeth, intitled, "An Act to retain the queen's majesty's subjects in their due obedience;" by which the Dissenters are, among other penalties, to abjure the realm in forty days, or suffer death without benefit of the clergy.

This penalty of abjuration of the realm was taken from the ancient common law of England in relation to felony, by which if a man committed any felony, excepting sacrilege, and fled to a parish church, he might within forty days before the coroner confess the felony, and take an oath to abjure the kingdom for ever; and if he thus confessed, and took that oath, he was thereby attainted of the felony, and then he had forty days from the coming of the coroner to provide and prepare for his voyage; and the coroner assigned him such a port as he chose for his departure out of the kingdom; and if he did not go straightway out of the kingdom, or being gone out, did return without license, he had judgment to be hanged, except he was a clerk, and then he had his clergy.

This practice was what the law called abjuration; and being by several regulations (in the time of Henry the 8th) in effect taken away, the revival of this practice was thought to be a wholesome severity, fit to be inflicted on the Protestant Dissenters of those times: and therefore the 35th of queen Elizabeth doth enact, "That if any person, obstinately refusing to repair to some church or chapel, or usual place of common-prayers, and forbearing by the space of a month to hear divine service, should after forty days after the end of that session of parliament, willingly join or be present at any conventicle or meeting, under pretence of religion, contrary to the laws and statutes of the realm; that then such person should be committed to prison, till he should conform and come to church: and if within three months after conviction he should not conform and come to church, and make his public confession and submission, being thereunto required according to the form of the said act; that then such offender should abjure the realm; and if, being thereunto required, should refuse to make such abjuration, or after such abjuration made, should not within the time appointed him depart the realm, or after such departure should return without the queen's license; then, in every such case, every person so offending should be a felon without benefit of clergy." So that the abjuration inflicted on Protestant Dissenters by this act, was worse than abjuration for felony at the common law; in that they had the benefit of the clergy, in this they had not.

This is one of the severities of queen Elizabeth's reign, whether it be a wholesome severity or not, human nature will determine: however wholesome it might have been esteemed in those days, by those who had the power and will to punish others, yet the legislature have *in terminis* declared it unwholesome for these times; and the Toleration Act doth expressly, and by name, exempt the Protestant Dissenters from the penalties of this act of the 35th of queen Elizabeth.

Now when the Toleration Act hath granted this exemption, for the Doctor to come and publicly represent an archbishop as a false son of the Church, and a perfidious prelate, for being for the Toleration of Dissenters in his time; and at the same time recommend the resolution and pious zeal of queen Elizabeth, for declaring that she would utterly suppress them, and her great prudence in exercising wholesome severities against them, which were of happy consequence to her person and govern-

ment; what could be said more against the Toleration Act, than this is? The Toleration Act exempts the Dissenters from the penalties and severities inflicted in queen Elizabeth's reign; the Doctor recommends them all again, as wholesome and necessary. Let any person judge, whether this is not an express declaration against the Toleration Act?

There is yet one thing more charged upon the Doctor in this part of the second Article; viz. That he scurrilously calls archbishop Grindall a false son of the Church, and a perfidious prelate, for deluding queen Elizabeth to the Toleration of the Genevian discipline. Whether this, considered abstractedly by itself, be in law a crime, or not, is not necessary for me here to examine. The Doctor conceives, that no words spoken of an archbishop, above 120 years since deceased, will in construction of law amount to an high crime and misdemeanor: whether it be so or not, in itself, I shall say nothing of at present; because I take it, that this is only taken notice of as an aggravation of the crime charged upon him, and to shew his zeal against the Toleration; that he was not contented with censuring the Toleration itself, but rakes into the ashes of an archbishop that had been in his grave 120 years, and blackens his memory, because he was for the Toleration of those people who are now by law tolerated.

My lords, I would on this occasion say a word or two to the memory of that archbishop. The Doctor says, he was under the displeasure of queen Elizabeth; that is very true: and he pretends, the occasion of his being under her displeasure was, for permitting innovations to be obtruded upon the Church. Those innovations were no other than what several other bishops at the same time likewise practised, and some bishops since have done not much unlike: it was for encouraging the meetings and exercisings in those days, called prophesyings; which were meetings of the clergy, to improve one another in the knowledge of the scriptures, and tended to make a learned and industrious clergy. This was misrepresented to the queen, and was the visible cause of his disgrace. But the true reason of his disgrace, as historians say, sprung from the hatred of the earl of Leicester, who was then in great power and credit with the queen, and her great favourite. This earl of Leicester cast a covetous eye upon Lambeth-house, and would have had the archbishop to have aliened it, but he would not comply with him; which, as the historians say, made the Leicestrian party to malice him. The earl was likewise provoked and incensed against him for another reason, viz. for prosecuting one Julio, a physician of the earl's, an Italian physician, for having two wives, one of which was the wife of another man, with whom he lived in adultery: for these two offences against the earl of Leicester, who bore a mighty power at court with the queen at that time, was this storm raised against him. But, my lords, for his life and doctrine, the archbishop was one of the most pious, learned, and considerable prelates, of that time. It is very true, that he was one of those bishops that looked upon the exercises used in those times by the clergy, called prophesyings, to be very necessary for their improvement, and for the benefit of the Church; and some of the best bishops of those times concurred with him in the same opinion. He was a man of the most exemplary life and conversation, free from the suspicion of a crime. In his younger days he was chaplain, with Rogers and Bradford, to Ridley bishop of London, who gave this character of him, that he was known to be a man of virtue, honesty, discretion, wisdom and learning. In the persecution under queen Mary, when his master and fellow-chaplains were burnt for religion, he became an exile on the same account, and quitted his ease, preferments, and hopes at home, to enjoy the liberty of his conscience in a foreign country, and went to Strasburgh: and, when the famous troubles begun at Frankfort, about the use of the English service, where the foundations were laid of the divisions that have since divided and rent the Church, he was so far from disliking the English method, that he went from Strasburgh to Frankfort, to encourage and persuade the congregation there to submit to the English establishment; and he himself stuck close to it all his life-time. At his coming home, in the beginning of the reign of queen Elizabeth, he had a great hand, and was very instrumental, in preparing the Liturgy and Book of Common-Prayer: and the first time that the English Service-Book was produced at St. Paul's in London, the privy-council, and great officers of state, for the greater solemnity, came to St. Paul's; and Grindall was appointed to preach to that great audience, upon that solemn occasion. He was one of the first five bishops made by queen Elizabeth; and was first bishop of London, afterwards archbishop of York, and last of all archbishop of Canterbury. And when afterwards, by the earl of Leicester's artifice, he was out of favour, and under the queen's displeasure; yet he had so great an interest in the clergy, and their esteem of him was so extraordinary, that even whilst he was under disgrace at court, and the displeasure of the queen, a considerable number of the convocation, then met, presented an elegant petition in Latin to the queen, to restore him; wherein they represented to her majesty, "That the archbishop had led a life free, not only from all crime, but even from the suspicion of a crime: that he had preserved his religion from all, not only corruption of popery, but schism; and had suffered persecution for righteousness sake, having wandered abroad in other countries for the cause of the gospel: and therefore they most humbly besought her majesty, not only to lift up the archbishop broken with grief, but to restore the Church to the archbishop, and the archbishop to the Church, to her subjects, to his brethren to foreign nations, and, in a word, to all pious people." These were the thoughts of the

clergy of the archbishop at that time, even when he was under the displeasure of the queen; so that there was no reason for the Doctor to asperse him as a false son of the Church, or a perfidious prelate; for it appears on the contrary, that he was a man universally esteemed for his virtue, piety, and learning.

The last charge of this Article is, that he asserts, "That it is the duty of superior pastors to thunder out their ecclesiastical anathemas against persons entitled to the benefit of the Toleration; and insolently dares or defies any power on earth to reverse such sentences."

To which the Doctor gives this Answer; "That the persons intitled to the benefit of the Toleration, are not by him mentioned or intended: but if those expressions in his Sermon must be determined to any one sort of persons, he conceives that the connexion of his discourse will determine them to those schismatical and factious persons, who take permission for power, and advance Toleration immediately into an establishment."

Now be it so, that he means those schismatical and factious persons; the next question, which will set this matter in a clear light, will be, who those schismatical and factious persons are, who take permission for power, and advance Toleration immediately into an establishment? And it is plain from the passage itself, which is in page 25, of the Sermon, that he means the Dissenters, those which are intitled to the benefit of the Toleration

"If our Dissenters, saith he, had lived in the times of St. Paul, they would have branded him as an intemperate, hot, furious zealot, that wanted to be sweetened by the gentle spirit of charity and moderation, forsooth. Schism and faction are things of impudent and encroaching natures; they thrive upon concessions, take permission for power, and advance a Toleration immediately into an establishment; and are therefore to be treated like growing mischiefs, or infectious plagues, kept at a distance, lest their deadly contagion spread. Let us therefore have no fellowship with these works of darkness, but rather reprove them. Let our superior pastors do their duty, in thundering out their ecclesiastical anathemas; and let any power on earth dare reverse a sentence ratified in heaven." And indeed the Doctor doth, in the following part of his Answer, in effect own it: for, saith he,

"As to the last part of the second Article, whereby the said Henry Sacheverell is charged with insolently daring, or defying any power on earth to reverse the ecclesiastical sentences there mentioned: he the said Henry Sacheverell saith, that the sentence which he the said Henry Sacheverell dares any power on earth to reverse, is such, and such only, as is ratified in heaven; and such sentence he still affirms to be by any earthly power irreversible: and hopes it will not be thought insolent in him to affirm, what he conceives would be blasphemy in any one to deny: and doth further acknowledge himself firmly to believe that some sentences pronounced by the pastors of the Church are ratified in heaven; and that some persons, exempted from punishment by the particular laws of the land, may yet by the laws of Christ be justly liable to such sentence; and that schism, or a causeless separation from a Church injoining no sinful terms of communion, is a sin, which exposes the person guilty thereof to the censures of the Church."

The House of Commons charge the Doctor with insolence, in daring or defying any power on earth to reverse the ecclesiastical sentences mentioned in his Sermon; and he, by insinuation, retorts upon them the charge of blasphemy. This the House of Commons thought they had reason to resent, and to call upon your lordships for immediate punishment of him, for treating them in this manner; but they leave it to your lordships, in what manner you will think fit to do them justice, in vindicating them against such a charge. But as to this passage now before you, he affirms, "That some sentences pronounced by the pastors of the Church are ratified in heaven; that some persons exempted from punishment by the laws of the land, may yet by the laws of Christ be liable to such sentence: and that schism, or a causeless separation from a Church injoining no sinful terms of communion, is a sin, which exposes the person guilty thereof to the censures of the Church." Now what is this but to say, the Dissenters causelessly separate from the Church, which imposes no sinful terms of communion, and so are guilty of schism? Though the law of the land doth exempt them from punishment for this schism, yet for this sin they are exposed to the censures of the Church; those censures, when inflicted, are ratified in heaven; therefore, notwithstanding the law of the land hath given them this exemption, let the ecclesiastical superiors know their duty, in thundering out their anathemas against them, and let any power upon earth dare to reverse their sentences if they can. As to the power of the Church in censuring or excommunicating, it is not necessary for me to say any thing of it upon this occasion: but the Doctor is a minister of the Church of England, who hath submitted to the queen's supremacy, and by the canon is bound to maintain and preach the queen's supremacy; her majesty is supreme over all causes, and over all persons, as well ecclesiastical as civil; and by an act of parliament made since her majesty's happy accession to the crown, viz. The act relating to her majesty's bounty for the augmentation of the maintenance of the poor clergy, she is owned and recognized to be the only supreme head on earth of the Church of England: her majesty hath by law a supreme controuling power over all the censures and excommunications of the Church; this power she exercises according to the rules of law, by her several officers and ministers of justice. The exercise of the Church's censures, jurisdiction and power, must be according to law; and if any person be excommunicated against law, the queen's courts may and

will command the ecclesiastical judge to assoil such excommunicated person, and restore him to the communion of the Church again. This is the supremacy of the queen, which is the doctrine of the Church of England; and by virtue of this supremacy, if any judge of the spiritual court shall pretend to excommunicate any of the Dissenters for any thing which by law they are not obliged to do, or which by law they are excused or exempted from, the courts of justice in Westminster-hall will in such case award a prohibition, and compel the ecclesiastical judge to absolve him. Suppose that notwithstanding the Toleration Act, a Dissenter, should, for not coming to the Church, be sentenced in the spiritual court by the judge there, or be proceeded against there, in order to an excommunication; a prohibition will lie to that judge from the queen's courts upon the said act, and the courts of common law will prevent him from such proceeding; and if sentence be passed, will compel the judge to annul the excommunication, and receive the party again. Now, for the Doctor to come and say, that though the Dissenters are tolerated by this act of parliament, and though they are exempted by law from penalties, yet let the law of the land be what it will, let the ecclesiastical pastors do their duty, let them fulminate their excommunications, and thunder out their anathemas, and let the civil magistrate, the earthly powers, dare to reverse them, if they can: I submit this to your lordships, whether this is not directly impugning the queen's supremacy, as well as weakening and censuring the Toleration, which is what he is charged with in this Article.

My lords, I will not take up more of your lordships' time; there are other gentlemen to come after me, who will abundantly supply my defects, and offer to your lordships some farther considerations to make out the charge contained in the second Article.

Lord *William Paulett.* My lords, the charge against the Doctor in this second Article, is a crime of a very heinous nature: It has always been esteemed one of the happy consequences of the late Revolution, that her majesty's Protestant subjects, by a legal indulgence granted to Dissenters, were united in interest and affection in the defence of her majesty's sacred person and government.

It is too well known, my lords, how in former times, when Popery had almost prevailed in the ruin of our State and Church, the Protestants of the kingdom were, by the artifice of Papists, set against each other, that by such divisions Popish tyranny might be established among us.

The act of parliament made in the first year of the reign of their late majesties king William and queen Mary, to exempt Protestant Dissenters from the Church of England from the penalties of certain laws, was made to defeat any such future attempts of the Papists; the preamble of the act declares, "That some ease to scrupulous consciences, in the exercise of religion, may be an effectual means to unite her majesty's Protestant subjects in interest and affection."

We have seen, my lords, the good effects of the wisdom of the legislature in making this act; her majesty's Protestant subjects are now all easy under her administration; and how many Dissenters have we seen, who, since the Toleration, are become sincere converts to the Church! And I may say, that by this Toleration the prejudices of the Dissenters in general wear off, and their number daily decreases.

And yet with what odious colours, and language unbecoming a divine, does the Doctor paint out this Toleration; and how does he factiously endeavour to excite and stir up people against it!

It is, my lords, a poor shift which the Doctor makes in his Answer, that he knows of no Toleration granted by law; and yet in the same Answer he owns there is an indulgence which the government hath condescended to give Dissenters. My lords, the word 'indulgence' is no more in the act of parliament than the word 'Toleration;' and it is well known that the act of parliament he alludes to, is every where, not only in courts of justice, but even in parliament, called the Toleration Act; and is frequently so called by your lordships in the Account of your lordships' proceedings in parliament, in relation to the Bill against Occasional Conformity, which account was published and printed by your lordships' order.

When the Doctor says that he has not been able to inform himself that a Toleration hath been granted by law, it plainly seems to import as if the Doctor doubted of the authority of parliament that made that law; it looks like the common sophistry of Papists and Jesuits, who pretend to own the Church of England as by law established; because they disown the authority of all our laws made since the Reformation.

My lords, her majesty hath always been pleased graciously to declare she will defend this Toleration; and this her gracious Resolution has among the innumerable blessings of her reign, united all her Protestant subjects in their loyalty and duty to her.

The Commons rest assured, that your lordships will always assist these gracious purposes of her majesty, and that as there can hardly be any instance given of so seditious and barefaced an attempt against the peace and quiet of the kingdom, as the Doctor hath been guilty of, so your lordships will, by an exemplary punishment suitable to so high a crime, vindicate the authority of parliaments, and give an effectual discouragement, for the future, to all such turbulent and seditious preachers.

Mr. *Cooper.* I think, my lords, it is unnecessary at this time to urge all the arguments which might be made use of, to justify the reasonableness of the Toleration granted to Protestant Dissenters, by exempting them from

the penalties of certain laws. It may suffice to say, that this indulgence is required from us as Christians, and as we are men professing humanity and good will towards one another.

Whoever maintains, that the Toleration is unreasonable, and the allowance of it unwarrantable, seems necessarily to assert, that the exemption granted to her majesty's subjects from the penalties of former laws, ought to be resumed; unless we are to suppose, that it can be reasonable to allow what is unwarrantable.

This assertion therefore, evidently arraigns the Act of Toleration, a law now in being, a law by which the people (throughout the whole series of this dangerous war) have been more firmly united in interest and affection than formerly; I mean, in the days when the penalties of those laws were inflicted with intemperate zeal.

My lords, before I proceed to make good the charge contained in the second Article of the Impeachment exhibited against the prisoner by the Commons, I must beg leave to take notice of the Introduction to his Answer: It seems he cannot, upon the most diligent enquiry, be able to inform himself, that a Toleration has been granted by law. I take it, the stat. 1. W. & M. which exempts Dissenters from the penalties of former laws, amounts to a legal indulgence, or grant of Liberty of Conscience; for by that repeal a liberty is given, which was before restrained, so that without impropriety it may be said, that Toleration is granted by law. Doctor Sacheverell, I find, had rather it should be called an exemption, for no other reason, that I see, but because he has not said much, if any thing, of the word 'exemption' in his Sermon, how free soever he has made with the Toleration.

Now taking it for granted (as I think with reason I may) that indulgence, toleration, or exemption from penalties, signifies one and the same thing, (especially as ordinarily made use of amongst us) can any thing be more plain, than that many passages in this infamous libel cast black and odious reflections upon the Toleration? They have been all read, and for fear (after what has been already said) of being too tedious, I will mention one only. The words are these:

"What could not be gained by comprehension and toleration, must be brought about by moderation and occasional conformity; that is, what they could not do by open violence, they will not fail by secret treachery to accomplish. If the Church cannot be pulled down, it may be blown up; and no matter with these men how it is destroyed, so it is destroyed," &c.

Pray, my lords, is it reasonable to allow Toleration? or rather, is not the allowance of it unwarrantable, if it was the open and violent means made use of to destroy the Church of England? And is not this a most uncharitable censure, highly reflecting upon the Act of Toleration, and the legislative authority? Is not this maliciously and falsely suggested, with a wicked and seditious purpose, to create jealousies and misunderstandings amongst her majesty's people?

Comprehension and Toleration are represented as open violence; moderation and occasional conformity as secret treachery, by which the Church may be blown up, though it could not be pulled down by the violent means of comprehension and toleration.

I should waste too much time unnecessarily, if I should take particular notice (after what has been already so well urged in maintenance of the second Article) of all the passages which seem to be equally liable to censure.

The *antistatis* throughout this paragraph is so very plain, that I hope it is not one of those mentioned in the Doctor's Answer to carry a dubious sense. The prisoner seems to have taken care to explain himself, for fear his meaning should have been doubtful; and therefore having said,

"What could not be gained by comprehension and toleration, must be brought about by moderation and occasional conformity;" then he adds, "that is, what they could not do by open violence, they will not fail by treachery to accomplish."

Having thus inveighed against the Toleration, with much ill nature and bitterness of spirit, he is pleased in the next place to assert, that he is a False Brother with relation to God, Religion or the Church, who defends it.

The Answer to this branch of the second Article is long, and, as I apprehend, seems to be evasive. First, there is a difference again taken, between Toleration and Liberty of Conscience, and an exemption or indulgence; and under this distinction, which for the reasons I have mentioned, is a distinction without a difference, the Doctor takes the liberty to maintain and justify, that he is a False Brother who defends Toleration and Liberty of Conscience.

I must own he endeavours to evade the charge, by saying he means those only, who at the same time they defend universal Toleration and Liberty of Conscience, do also excuse the separation, and lay the fault upon the true sons of the Church, by carrying matters too high.

Whatever he is pleased to say he meant, in Answer to this part of the Article, surely no such meaning can be collected from his Sermon. Throughout the whole libel, I presume to say there is not one word of universal Toleration, or universal Liberty of Conscience; this is another kind of Toleration, never heard of till it was new coined, in order to extenuate his vile and uncharitable assertions.

Here he is pleased to sum up the modish criterions, as he terms them, of a true Churchman, in a figurative and ironical manner, and plainly asserts they are the several characteristics of a False Brother; amongst the rest, to defend Toleration is said to be one; and under pretence of moderation to excuse the separation (i. e.) of the Dissenters, of whom he had next

before spoken, is another; and concludes the paragraph with this pathetic expression, "God deliver us all from such False Brethren!"

Having thus treated those who defend Toleration, his superior pastors are in the next place to be admonished of their duty, which is to thunder out their ecclesiastical anathemas against the persons intitled to legal indulgence; which anathemas are stiled sentences ratified in heaven, and such as no power on earth dare reverse.

Far be it from me to say, that sentences ratified in heaven can be reversed by the powers of this world. But if Dr. Sacheverell were a superior pastor, and should anathematize, or, in plain English, curse and sentence all those who enjoy the benefit of Toleration to damnation, he must excuse, if I could not believe that such a sentence would be ratified in heaven.

And as to any ecclesiastical censure not ratified in heaven, it is downright insolence to say, there is no power upon earth that can reverse it.

But since our superior pastors will exercise a truly Christian and noble spirit of charity and moderation, and indulge scrupulous consciences, the Doctor is pleased however to bear his testimony against it, and is not contented with delivering over to Satan those only who enjoy the indulgence, but they who defend Toleration must also bear them company.

His indeed is a very comprehensive anathema, and is conceived in these words; viz. "And as he chose it in this world, appoints him in the next his portion with hypocrites and unbelievers, with all liars, that have their part in the lake which burns with fire and brimstone, with the grand-father of falshood, the devil and his angels. And so here we leave our False Brethren, in the company they always kept correspondence with."

This, my lord, is a most dreadful unchristian sentence, a sentence so barbarous, so astonishing, that I am at a loss to imagine, how it could enter into the mind of man to conceive it.

Perhaps, my lords, it may be equally dangerous to defend the ashes of the venerable prelate archbishop Grindall; he, it seems, was a false son of the Church, and a perfidious prelate, because he deluded queen Elizabeth to a Toleration of the Genevian discipline. Here we may observe the Doctor's great aversion to all kind of Toleration.

Methinks, for the sake of the Reformation, better language should have been given, and more decent expressions should have been bestowed upon a man we all know bore so considerable a part in the establishment of it..

Here likewise we may observe the Doctor's inclination to wholesome severities, such as queen Elizabeth made use of, which were such as, I hope, will never be seen more in this kingdom. And by the way, what a spirit is this man of, who can find nothing to commend in the reign of that glorious queen, but the blackest and worst part of it?

I cannot agree, that these harsh expressions, as the Answer owns they are, are the rather to be excused, because the remains of the archbishop were so long since deposited, especially when we consider that his memory has been had in the highest esteem and veneration by all the reformed churches in Christendom, from that time down to the 5th day of November last.

For my own part, I think it very immoral to cast reflections upon the dead, how ill soever they may have deserved from us; and the longer a man has been so, in my opinion, rather aggravates than lessens the immorality.

I am free to own, he whose morals will permit him to reflect upon the departed, is not therefore to be impeached for it, as for an High Crime and Misdemeanor; but that is not the present case. Archbishop Grindall is thus severely treated upon a supposition he deluded the queen to a Toleration; and all the hard words which are falsly and unreasonably bestowed upon him, are evidently levelled at the present Toleration, and designed maliciously to asperse and traduce it, by representing it as injurious to the character of all concerned in it, dangerous to her majesty, and destructive to the constitution both in Church and State.

By these means, my lords, and others (if possible worse than these), one part of the people, through groundless fear and jealousy unreasonably and maliciously instilled, are to be stirred up to arms and violence; others, upon the peril of damnation, are not so much as to utter one word in defence of Toleration; whilst the third and last part are to have the Doctor's wholesome severities executed upon them.

My lords, It is too notorious that this incendiary, for so the Articles of the Commons of Great Britain have called him, has already stirred up unaccountable feuds and quarrels throughout the nation; the Commons are too sensible of it, and have therefore brought the offender before your lordships in justice and judgment.

Many are the seeds of sedition which he has sown; and the fruit to be expected is civil discord and confusion, unless some remedy shall be applied to prevent it.

The Commons, for her majesty's safety, and for the security of the constitution, have thought it absolutely necessary to bring him to answer for these High Crimes and Misdemeanors before your lordships' tribunal; conceiving his offences to be of so exorbitant a nature, that they deserve the solemnity of this proceeding.

(And then the Lords adjourned to their House above.)

Third Day.

Wednesday, March 1.

The Lords coming down into Westminster-hall, and being seated in the manner before-

mentioned, proclamation was made by the serjeant at arms as follows:

Our sovereign lady the queen doth strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

Then another proclamation was made: Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy bail, else thou forfeitest thy recognizance.

The Doctor appearing at the bar accordingly, with his counsel as before,

Lord Chancellor. Gentlemen of the House of Commons, you may proceed in your evidence.

Mr. *Thompson.* My lords, your lordships having heard what has been produced in maintenance of the two first Articles of this Impeachment, I shall take the liberty to proceed and endeavour to discharge the trust reposed in me by the Commons, to support the third Article, and the accusations contained in it. I will not waste your lordships' time, by making any apology for my inabilities, and being unequal to this undertaking; not doubting but that I shall find from your lordships a candid interpretation of whatever I shall offer on this occasion.

This Article, my lords, is founded on a Vote or Resolution of your lordships and the Commons, in parliament assembled, which is recited in the preamble of these Articles, and the occasion of which it may be necessary to mention to your lordships. It was some few years ago that there were many scandalous and seditious rumours spread abroad, of the Danger of the Church of England, as established by law. There were several libels dispersed over the kingdom, reviling her majesty's administration in Church and State; and among the rest, one intitled, The Memorial of the Church of England. Her majesty was pleased to take notice of these seditious reports from her throne to the parliament; and thereupon your lordships and the Commons, on the 17th of December, 1705, came to the Vote or Resolution mentioned in the preamble, and an Address, which is recited to this effect; "That your lordships and the Commons, in parliament assembled, did address and lay before her majesty a Vote or Resolution, that the Church of England, as established by law, and which was rescued from the extremest danger by his late majesty, of glorious memory, was, by God's blessing, under her majesty, in a safe and flourishing condition; and that whoever should go about to suggest and insinuate that the Church is in danger under her majesty's administration, is an enemy to the queen, the Church, and the kingdom.

"And that your lordships and the Commons, by their said Address, did humbly beseech her majesty to make the said Vote or Resolution public, and to take effectual measures for the punishing the authors and spreaders of such malicious and seditious reports. And that on the 20th of the same December, her majesty was pleased to issue her royal proclamation accordingly."

Now, my lords, this Article charges, "That in opposition to, and defiance of, and in order to arraign and blacken that Vote or Resolution, Doctor Sacheverell, in his Sermon preached at St. Paul's, does suggest and assert the Church of England to be in a condition of great peril and adversity under her majesty's administration." The Article further says, "That he wickedly and maliciously insinuates, that the members of parliament, who passed that Resolution, were themselves conspiring the ruin of the Church, which they voted to be out of danger: and this by way of parallel or allusion to that assembly, who voted the person of king Charles the first to be out of danger, at the same time when they were conspiring his destruction."

My lords, I will now do the Doctor the justice to take notice of what he says in his Answer, and alleges as his justification. He denies that he asserts the Church to be in danger under her majesty's administration; or otherwise than from vice and infidelity, blasphemy and profaneness. And as to the parallel in the Vote, and the insinuation of the members conspiring the ruin of the Church; he says, he never mentions that Vote, nor did he design the parallel as laid to his charge. He only meant, that while some men were conspiring the death of the king, others, not privy to this design, voted him out of danger: so, though the members voted the Church to be out of danger, yet others were conspiring against the Church, and by their vice and infidelity were drawing down vengeance on the Church and kingdom. And as to that Vote made four years ago, he says, it concerns only those who did then insinuate the Church of England to be in danger under her majesty's administration.

Now, my lords, having stated the charge, and the defence, I shall proceed to acquaint your lordships with the several passages of the Sermon, which the Commons apprehend will make out their accusation. And here, my lords, I shall take leave to say, that no strained or forced constructions can be desired by the Commons, or expected from your lordships, or any inferences to be deduced, but what naturally arise from a fair, impartial and candid interpretation.

My lords, the first passage which the Commons apprehend is for their purpose, is in the 5th page; the Doctor, just before, enumerates St. Paul's misfortunes that befel him whilst he was propagating the gospel, and says, "There is a very observable gradation in his sufferings; but that, of all his calamities, the highest of them proceeded from False Brethren:" and taking notice of the condition of the Church of Corinth, then follow these words; "Though it were very obvious to draw a parallel here betwixt the sad circumstances of the Church of Corinth formerly, and of the Church of England at present, wherein her holy com-

munion has been rent and divided by factious and schismatical impostors, her pure doctrine has been corrupted and defiled; her primitive worship and discipline profaned and abused; her sacred orders denied and vilified; her priests and professors (like St. Paul) calumniated, misrepresented and ridiculed; her altars and sacraments prostituted to Hypocrites, Deists, Socinians and Atheists; and this done, I wish I could not say, without discouragement, I am sure with impunity, not only by our professed enemies; but, which is worse, by our pretended friends, and False Brethren."

It may be observed, that the Doctor is very free in his parallels; when either Church or State is to be represented by comparisons, he is pleased to make use of the worst he can find. He says, the Church of Corinth was in the utmost of perils; and then it was to his purpose to make the allusion, and bring the Church of England into the same condition.

Here are many particulars in this passage, whereby the Church is said to be in sad circumstances, and I cannot tell how to apply them according to the Doctor's way of interpretation; for he says, all these enormities are practised, not only without discouragement, but with impunity; not by professed enemies, but by False Brethren: so he plainly shews who he aims at as the authors of these calamities. He excludes vicious infidels, blasphemers, and heretics, who are professed enemies, and lays it upon False Brethren: and he explains what sort of False Brethren he means; for who can prostitute altars and sacraments to Deists, Atheists, and Socinians, but some of his own order? And who are to punish such offences among the clergy, but their spiritual superiors? And whether they are not part of her majesty's administration, I submit to your lordships.

But, my lords, supposing the fact to be true, that there are erroneous doctrines published; to what end must the world be told in this manner that they are vented with impunity, but to reflect on those who should punish them? And can that be done without a prosecution? If the Doctor had produced any of his undeniable and ample proofs of these matters, (which he mentions in his Answer) before any court that had a proper conusance of them, and been denied justice, he might have had more reason for complaint: but to blame his superiors for not punishing what they might be ignorant of, and which he says, he was not, (and for which he might have promoted a prosecution) seems to retort the guilt upon himself, which he would lay upon them.

My lords, the second passage is in page the 16th. He is talking of a comprehension which was designed, not long since, to unite the Church and Dissenters; and complains of the persons who were concerned in that heinous intention; and then he asserts, "That since this model of an universal liberty and coalition failed, and these False Brethren could not carry the Conventicle into the Church, they are now resolved to bring the Church into the Conventicle, which will more plausibly and slily effect her ruin. What could not be gained by comprehension and toleration, must be brought about by moderation and occasional conformity; that is, what they could not do by open violence, they will not fail by secret treachery to accomplish. If the Church cannot be pulled down, it may be blown up; and no matter, with these men, how it be destroyed, so that it is destroyed." Now, my lords, who were these False Brethren that were concerned in this design of comprehension, which failed, and, who introduce worse mischiefs? Do these dangers proceed from vice and infidelity, from blasphemy and erroneous doctrines? No, my lords; these False Brethren are described in the page before, under his second general head, to be in Church and State: which must be persons in power, and authority; the expression itself imports it; nor could they otherwise be capable of accomplishing that design, of uniting the Dissenters and the Church: to which design, and the authors who intended it, he is pleased to give the most vile and scurrilous names imaginable: and afterwards he lays to their charge an intention to blow up the Church by moderation. And this, I suppose, is one of the vices which the Doctor mentions in his Answer, as one means of danger to the Church. If moderation be a vice, I will do the Doctor the justice to acquit him from the least tincture of it, in any of his works that I have ever met with.

My lords, the third passage is in page the 18th. He is continuing his observations of the danger from the same False Brethren in Church and State; and then his words are, "Falshood always implies treachery; and whether that is a qualification for any one to be trusted, especially with the guardianship of our Church or Crown, let our governors consider." This, my lords, must relate to persons, who (as he would insinuate) are not fit to be trusted with the guardianship of the Church or Crown: and whether this reflection does not seem to aim higher than the administration, I submit it to your lordships.

The next passage is in page the 20th: the words are these; "And now we are under no danger in these deplorable circumstances? Must we lull ourselves under this sad repose, and in such a stupid lethargic security embrace our ruin? When Elisha, the great prophet of God, was surrounded with an host of enemies that sought for his life, his blind servant beheld not the peril his master was in, till his eyes were opened by a miracle, and he found himself in the midst of horses and chariots of fire. I pray God we be out of danger; but we may remember, that the king's person was voted to be so at the same time that his murderers were conspiring his death."

Now, my lords, the Doctor, to excuse this passage, says, The deplorable circumstances we are in, proceeds from the maturity of na-

tional sins, &c. as in his Answer. But who are mentioned in his Sermon as the occasion of the security of national sins but the Dissenters, who, he says, are plotting the ruin of the Church, and False Brethren join with them? So that here neither is the danger asserted from vice and infidelity, but as it is occasioned by the dissention from the Church, which the law has thought fit to apprehend as no danger to the Church; and therefore it did not become him to assert the contrary. Then as to the parallel of the assembly who voted king Charles the first out of danger, and of the members who made the Vote about the danger of the Church four years ago, he says, he meant no reflection on any of the members who passed that Vote, because he never mentioned that Vote; and as to the Vote about king Charles, others were conspiring his ruin than those who voted him out of danger; so while the parliament voted the Church out of danger, there were other enemies conspiring her ruin. If the Doctor intended no reflection upon that Vote, why was voting in any case mentioned? Can any one imagine that the Doctor did not know of that Vote, since the danger of the Church is so much his topic? Nor can I presume him ignorant of the time when that Vote about king Charles was passed; which, as far as I can observe from the history of that time, was in November, 1648, that he was voted out of danger; and when he was tried and beheaded, I need not mention to your lordships: and whatever alteration might be made in that assembly after the Vote, and before his death, was done by those persons who conspired his destruction, and who were part of that assembly who voted him out of danger. So that it seems plain, that the vote of safety, and the conspiracy of ruin, came from most of the same persons; and it does not seem very strange to suppose the Doctor intended his allusion in the same manner.

And as to the Scripture he quotes to this purpose, "That the blind servant beheld not the peril his master Elisha was in, till his eyes were opened by miracle, and he found himself in the midst of horses and chariots of fire." My lords, these horses and chariots of fire were not the prophet's enemies but his friends; nor was there any danger to be feared from them; on the contrary, they were a security from his enemies; so that he plainly perverts the sense of that text, to make a stronger impression, and more effectually to delude the people.

My lords, the last passage is in the last page: he is still talking of the danger of the Church, and quotes a text as in the Lamentations, (viz.) "Though she lies bleeding of the wounds she received in the house of her friends." Indeed, my lords, I cannot find it there; therefore it seems to me to be a lamentation of the Doctor's own making. Then he goes on, "Though the ways of Sion may mourn for a time, and her gates be desolate, her priests sigh, and she in bitterness, because her adversaries are chief, and her enemies at present prosper; though among all her lovers she has few to comfort her, and many of her friends have dealt treacherously with her, and are become her enemies." My lords, I mention these passages only, to shew, that the Doctor, by the most pathetic expressions of his own, mixed with these texts of Scripture, endeavours to represent the Church of England to be in the utmost danger.

I shall trouble your lordships no further with the passages in this Sermon; but should not omit to take notice, that there is a suggestion in the Doctor's Answer, that the Vote four years ago did not concern him; but that it related only to them that then did assert the Church to be in danger: if he had minded the words of the Vote, he would have found there was no pretence for that objection: for it is, "Whoever shall go about to insinuate, that the Church is in danger under her majesty's administration;" which must relate to any time during the continuance of her majesty's reign.

And now, my lords, I beg leave to observe some circumstances attending this offence, which give it the highest aggravation. That memorial which was published some years ago, and was the chief occasion of the vote in parliament, was a libel that reviled her majesty and her administration, as the occasion of the danger of the Church. The author was pleased to conceal himself, and durst not avow his doctrine; but the book had the fate it deserved: and from the ashes of that phœnix arose another memorial, with many of the same virulent expressions against her majesty's administration, agreeing in the whole scope of it, as to the same scandalous purpose; but far exceeding it in malice and inveteracy.

And this new memorialist has presumed to publish his seditious reflections in the most open manner imaginable; first at the assizes at Derby, and afterwards in the great church of this metropolis; and has thought fit to print and disperse about forty thousand of them over the kingdom. From whence could this extraordinary zeal proceed? Was it to exhort men to revere their governors, and to submit to those in authority over them? Was it intended to preserve peace and good-will amongst men? to promote charity, brotherly love and affection? No, my lords, there is plain evidence to the contrary, *ex ore suo judicabitur*. He tells you the reason of his topics in that place; he says, he intended "to open the eyes of the deluded people in that great metropolis; to set the rich and powerful inhabitants right in their notions of government in Church and State." They were obliged to him for his pious design, and for instilling those doctrines, which, as your lordships were told yesterday, would make their religion, liberty, property, and all that is dear and valuable, precarious: he tells you further, "That our constitution of Church and State is vigorously attacked from without, and lazily defended from within; that there are attempts upon the friends of the Church, to shut their eyes and mouths, in order to undermine and destroy them; that he

thinks the pulpit a proper place for politics; and that it is the business of a clergyman to sound a trumpet in Sion, to cry aloud and spare not." And in his Preface to the Derby Sermon he explains himself still further upon this topic, "That the Church is shamefully betrayed and run down; that there are some still who will defend it with their lives and fortunes." And states the case as if there was an immediate necessity to take up arms for a holy war upon this occasion.

My lords, this crime is more heinous, for that there is the least reason for these seditious murmurs, that has been in any reign whatever. Is there any invasion or attempt upon the Liturgy, even the least ceremony of the Church, or any part of the ecclesiastical constitution? Are her revenues impaired, or any of her temporal rights violated? No, my lords; but our royal sovereign has distinguished her care for this Church in a more peculiar manner than any of her predecessors; she has given from her own revenue to increase that of the clergy, for their more creditable support, and to enable them to preach sound doctrine for the welfare of her subjects; nor is her majesty wanting to promote religion, piety and virtue, by her own royal example, the most effectual encouragement. These are the true basis of the Church, and the best pillars to support it. And what occasion was there for these reflections on her majesty's administration? Has not that venerable bench given the world abundant proof of their care and vigilance to preserve that Church, of which they are the guardians, by their learning and unblamable conduct; by their zealous and resolute defence of her in the worst of times, and against all her enemies? It is very surprizing that a gentleman, whose education has been in the fountain of learning and religion so many years (who cannot be presumed to err through ignorance), that he should presume in his private capacity to contradict the sense of the whole nation, and cast such aspersions on his superiors. To what end could he so zealously disperse his notions, if not to animate a deluded people to the execution of seditious designs?

It were to be wished, that a government could be supported by mildness and clemency; but such is the state of depraved nature, even these most Passive Obedience natures, that they are not contented to be only ungrateful for the benefits they enjoy from the Church and State, but they must rebel against principle, and fly in the face of that government from which they receive their support and protection.

The Doctor cries aloud, and there are many others that spare not: some have presumed to censure this very proceeding before your lordships, as a persecution of the Church. And what must be the consequence of tolerating such bold and daring spirits to go on in their seditious practices!

If your lordships do not vindicate your own resolutions, and exert your power and authority to suppress that audacious and unparalleled insolence, that daily flies abroad from the pulpit and the press, (which, as the Doctor says truly, are become the mints of faction and sedition) I may take leave to say, there will be too much reason for his assertions of danger both to Church and State: but the Commons are so well satisfied of your lordships true concern for the preservation of our constitution, that they cannot imagine you will suffer any attempts, that may be pernicious to the welfare of the government, to pass without condign punishment; and therefore they intirely rely on your lordships' wisdom and justice.

Mr. *Compton*. May it please your lordships, I am commanded by the Commons to assist in maintaining the third Article of their Impeachment against Doctor Henry Sacheverell, which has been fully opened to your lordships by the learned gentleman that spoke before me.

My lords, the Commons think they have good reason to assert, that Dr. Sacheverell, in his Sermon preached at St. Paul's, doth falsly and maliciously contradict and arraign a Resolution of both Houses of Parliament, approved of by her majesty, and made public by her royal proclamation.

My lords, your lordships cannot but have observed, that it has been one of the constant artifices of the enemies of the present happy establishment, who very well know the just value the people of this nation have for the established Church, to suggest and insinuate, that this Church is in a condition of great peril and adversity, in order to foment animosities, and to cover designs which they dare not publicly own. But how frequent soever this has been, I believe I may safely affirm, that this scandalous and seditious assertion was never so boldly maintained, nor with such invidious and aggravating circumstances, as by the criminal at your lordships' bar.

The learned society, of which he is a member, reaped such signal, such immediate advantages from the Revolution, that he could not be unmindful, he could not be ignorant of the extreme danger from which our laws and liberties, our Church and Constitution were rescued by his late majesty. But such is his ingratitude to our great deliverer, such is his inveteracy to the Revolution, that he makes that very Revolution the period of time from whence the enemies of our Church first had hopes to deliver her up to her worst adversaries. Nor does his malignity cease there; but he endeavours to persuade the people, that from the Revolution to the present time, there has been a continued series of contrivances to ruin and destroy the Church: at the Revolution, by open violence; but now, that is, under her majesty's administration, by secret treachery; and since neither the late nor the present reign can escape his invectives, for what person he reserves his panegyrics, is submitted to your lordships to determine.

My lords, I would not take up any of your

lordships' time unnecessarily; but I must not conclude, without expressing the indignation the Commons have at his traducing and vilifying the last parliament, by that odious parallel in the 21st page of his Sermon preached at St. Paul's.

My lords, the parliament he thus endeavours to blacken, was opened with so full an appearance in both Houses, that her majesty observed it with satisfaction from the throne; and at the same time her majesty with grief observed the malice of such persons who suggested the Church was in danger; and desired the assistance of her parliament to discountenance and defeat such practices. And in duty to her majesty, to secure the quiet and peace of the kingdom, and to disappoint the designs of the enemies of our Church and Constitution, both Houses of Parliament came to the Resolution, set forth by the Commons in the Articles of the Impeachment which have been read to your lordships. And the same parliament proceeded in this and other matters which were before them, with so much vigour, as well as prudence, that in less than six weeks her majesty graciously took notice, that their proceedings had had a good effect all over Europe. And at the conclusion of the session, her majesty, with great goodness, declares how much she was pleased to observe their unanimity and zeal throughout the whole session, against every thing that tended to sedition. It was this parliament that so cheerfully concurred with her majesty in promoting and completing the union of the two kingdoms. And it was the gentlemen that composed this parliament, joined by the representative of the other part of the united kingdom, who readily and unanimously assisted her majesty in disappointing the attempt of the Pretender to her crown, whose chief dependance was in the restless and arbitrary principles of some of her majesty's subjects, ill-affected to their country.

And now, my lords, is there any ground to compare the dutiful proceedings of such a parliament, with what was done in those unhappy times, with which he would maliciously draw a parallel? No, my lords. And I may safely venture to say, that it is impossible to find the least resemblance between her majesty's glorious reign and that unfortunate administration, except that there were then, as there are now, "Ministers of the Church, who by their function, being messengers of peace, set up to be the trumpeters of sedition, and incendiaries to rebellion," Clar. Hist. of the Reb. vol. 2, p. 18. But, my lords, the Commons hope, that the happy period is now come, when even this resemblance shall have its determination; for they entirely rely on your lordships' justice to inflict such an exemplary punishment on this offender, as may deter others from endeavouring to distract the kingdom with such groundless distrusts and jealousies for the future.

Lord *Coningsby*. My lords, I am commanded by the Commons of Great Britain to assist, and endeavour to make good, the important Charge they have exhibited against the criminal at the bar: and because I am least able among all the gentlemen that have that honour, out of indulgence to me I am assigned to the Third Article, that wants least to be supported.

The Sermon preached by the Doctor at St. Paul's, and which has been read to your lordships, from the first word in the title page to the last line in the conclusion, is one false, malicious, and seditious assertion, That the Church of England was under the last reign, and is under the present, in the utmost peril and danger.

The proclamation which your lordships have heard mentioned, and which was designed by our glorious queen, from whose speech it took its rise, by your lordships, and the Commons who concurred in it, to be a warning to such incendiaries as the criminal, not to trumpet amongst the people suggestions so seditious, in order to cover designs more dangerous, and which, God be praised, they are not yet strong enough, nor never I hope will be, publicly to own; shews this malignant offender committed this offence in defiance of her majesty, your lordships, and the Commons.

The proofs, which almost every gentleman has brought to the two preceding Articles; and those particular instances that have been so fully opened by these gentlemen who have spoke before me to the present, shews that it would be vain in me, and mis-spending your lordships' time, to pretend to enforce those points, already so fully made good.

I shall therefore very shortly, though I hope very plainly, lay before your lordships what are those pernicious designs the Doctor intends to cover, and at last hopes to bring to pass, by his preaching, printing and publishing, not only round this kingdom, but amongst his friends on the other side of the water, this seditious, I may say, rebellious, discourse, for which he stands at present impeached by the Commons.

And as it has been shewn your lordships, by the gentlemen that made good the First Article, that the Doctor, by reflecting on the necessary means to bring about the Revolution, the foundation on which our present happy establishment is built; by asserting that her majesty ought to depend upon no other title to the crown but her hereditary one; designed, by such destructive positions, to bring back the Pretender, with Popery and French tyranny attending him, to govern the state.

So it is as plain, from the whole scope of his Sermon, that the Doctor, and all those in combination with him, have nothing more at heart than to destroy the present Church, as established by the wholesome laws of this land, and that because it is most consonant in its doctrine and discipline to that of the primitive Christians, of any since the time of the Apostles; and consequently less agreeable with the flaming opinions of such firebrands, who know not of what spirit they are of: and this, in order

to set up a scheme of a Church, agreeable to the tyrannical one they have projected for the state: a Church, the Doctor's I mean, though in pretence Protestant, that would be ready soon to be turned into a monster, by adding to itself a Popish head.

A Church that will destroy all those that brought about, and have since supported, the happy Revolution.

A Church, which upon Anti-Christian principles, professes burning for conscience-sake; which the Doctor, like those wicked men whose mercies are cruel, calls wholesome severities.

A Church that will turn all the blessings we enjoy under the present administration, into all those miseries we got rid of by the late glorious Revolution.

I cannot doubt, therefore, but your lordships will, out of duty to the best of queens, and in justice to your lordships and the Commons, deter others from ever being guilty of the like heinous offence.

Mr. *Dolben*. My lords, this Article of the Commons' Impeachment contains one criminal position, That the Church of England is now in a condition of great peril and danger under her majesty's administration, aggravated by an odious parallel that affords a pregnant proof of the true spirit and designs of this bold offender.

The accusation has already been fully made out by plain and positive words in his Sermon; from which, as well as from many other passages, I shall beg leave to submit to your lordships' judgment, whether that wicked parallel may not justly be turned upon him? Whether there is not more than suspicion that he and all his abettors, are conspiring the ruin and destruction of the Church, when under the disguise of a false zeal they prostitute her sacred name, to carry on dark and deep designs, fatal both to Church and State?

I shall only briefly take notice to your lordships, that the guilt of this offence arises from a plain contempt of her majesty's proclamation, and of the Resolutions of both Houses of Parliament; moved by no inducement, but an eagerness and industry not to let any shadow or colour escape, that may contribute to his part in the grand design, to be only effected by fomenting divisions and distractions amongst us.

But, my lords, in order to unveil the Doctor's pretences, and to take away his trivial excuses, I beg leave to represent to your lordships, that if the whole legislature had not, from a full conviction of the Church's security and safety, laid a severe injunction against the publishing such a false and pernicious suggestion, yet evident truth ought to have taught him not to have transgressed in so notorious a manner.

My lords, when it appears that the Church has the sanction of so many and so good laws to establish and defend it; when the veneration and devotion to it, of so great a majority of the people, is so visibly fixed in their hearts, that the bad examples and provoking behaviour of this False Brother, and of several others of the same stamp, have not made the least abatement, or impression to its disadvantage; when the parliament, on all occasions, appears so forward and unanimous in their zeal and affection for it; when it is recommended and illustrated by the learning, piety, wisdom, charity, and Christian moderation of so many of its chief pastors; but, above all, when it is under the protection and government of a supreme head, a true and constant defender of its faith and discipline, who having already exposed her royal person to hardships and dangers, to rescue it in a time of its utmost peril, does continue daily to manifest the same devotion, piety, and tender concern for it: under this powerful alliance for its support, can aught but malice and envy at its prosperity, can any one but an incendiary or disguised enemy insinuate, that the Church of England is not fenced and fortified with an impregnable barrier against all danger from open attacks or violations?

It is true, indeed, my lords, that no human care or policy can prevent the attempts and secret conspiracies of intestine traitors. Vipers in the bosom may sting, though the body be covered with the strongest armour. All that can be done is, to be watchful to discover and expose the hypocrite, to detect and punish his crimes. The Commons, on this occasion, are here exerting their part of this duty, fully assured of success from your lordships equal zeal and justice.

My lords, you have now brought to your bar a clergyman, bound, by the strongest ties and duty of his function, to instruct and propagate the necessary means for the people's true happiness in this world, as well as the next; yet your lordships will find him proved to be a trumpeter itinerant of sedition and rebellion, first at Derby, then in London; an agent detached from that dark cabal whose emissaries appear in all shapes, and almost in all places; an asserter of such pestilential and unparalleled doctrines, as at once overthrow the whole constitution both of Church and State. He may perhaps urge a precedent, in which it has been pleaded, and from the pulpit, that an urgent necessity can justify the breach of laws; and from others, that in particular cases they may be dispensed with; but this gentleman must be allowed the infamy, to have stretched and improved those pernicious tenets to the exalted height of making all our laws, liberties, religion, and lives, held only at the precarious pleasure of any bold invader; for nothing can be a plainer exposition or consequence, when it is taught, that no oppression, no violation can justify an opposition to it.

My lords, the Commons have brought this offender before you, with a view not only to detect and punish his offence, but to obtain an occasion in the most public and authentic manner to avow the principles, and justify the means upon which the present government and the Protestant Succession are founded and

established; and this more out of a generous concern for posterity, than for our own present security. My lords, we are so happy as to have a sovereign on the throne, whose goodness, justice and piety, leave no room for the least fear or jealousy; but we hope the record of this proceeding will remain a lasting monument, to deter a successor, that may inherit her crowns, but not her virtues, from attempting to invade the laws, or the people's rights; and if not, that it will be a noble precedent to excite our posterity to wrestle and tug for liberty as we have done. My lords, I doubt not but her majesty will, with the greatest satisfaction, see the government thus put upon a right and equal foot, since thereby those blessings will be secured to future ages which her happy reign has planted amongst us; since thereby she will entail a lasting felicity on her people, and prevent those real dangers both to Church and State, which at this time are so falsly insinuated. But, my lords, if this should not now be effectually obtained, and by such wholesome severities as the Doctor applauds and recommends, give me leave to conclude, with a juster complaint than that in his Answer, that hard is the fate of that people, who after having been 20 years in war, in conjunction with so many great allies, with the expence of so much blood and treasure, contending only against tyranny and oppression, and which we may justly hope is at last subdued, shall then see all Europe enjoy the fruits and benefits of our labours; and at the same time, though her majesty's well-chosen general shall at last bring home peace, as he has so often the laurels of victory, to lay with humble duty at her royal feet; yet we, only we, must be rendered uncapable of the common blessing, betrayed at home to a perpetual condition of bondage, by such False Brethren as are at your lordships' bar.

Then lord Haversham moved to adjourn to their House above; and being returned, and seated as before, proclamation for silence was made by the Serjeant at Arms.

Lord Chancellor. Mr. Dolben, the Lords have taken notice, that at the conclusion of what you spoke, you used this expression, "As are at your lordships' bar;"* which words are so general, that their lordships are of an opinion that they want an explanation.

Mr. *Dolben.* My lords, those words had relation only to the prisoner at the bar.

Serjeant *Parker.* My lords, your lordships have heard the three first Articles of this charge largely spoken to; it is my duty, in obedience to the command I have been honoured with by the Commons, to make good the charges in the fourth. I am sensible how unequal I am to such a work, both from my want of capacity, and my present indisposition; but however, in such manner as I can, I shall endeavour it.

This Article sets forth, "That he the said Henry Sacheverell, in his said Sermon and Books, does falsly and maliciously suggest, that her majesty's administration, both in ecclesiastical and civil affairs, tends to the destruction of the constitution; and that there are men of characters and stations both in Church and State, who are False Brethren, and do themselves weaken, undermine and betray, and do encourage and put it in the power of others, who are professed enemies, to overturn and destroy the constitution and establishment: And chargeth her majesty, and those in authority under her, with a general male-administration; and as a public incendiary, he persuades her majesty's subjects to keep up a distinction of factions and parties, instills groundless jealousies, and foments destructive divisions among them, and excites and stirs them up to arms and violence: And that his said malicious and seditious suggestions may make the stronger impressions upon the minds of her majesty's subjects, he the said Henry Sacheverell does wickedly wrest and pervert divers texts and passages of Holy Scripture."

This Article in general, is a charge of sedition under several aggravations, and made good by almost every part of the Sermon and Dedications read before your lordships in evidence.

The avowed design of the Sermon is, to represent the extreme perils and distresses of the Church and Constitution from False Brethren, that are in the administration, and countenanced by it.

He represents the Church in the utmost extremity, those fences broken down, without which she is naked and unguarded, her altars and sacraments prostituted, herself deserted, betrayed, undermined and persecuted, with open violence, bleeding of her wounds, her enemies openly calling for her destruction.

The nation, sunk into the lowest degree of corruption, swarming and over-run with Atheists, Deists, Socinians, Hypocrites, Villains, Rebels, Traitors, Correspondents with the Devil, nay, with men that are themselves the worst of Daemons.

The government, so far from applying a remedy, that all this is done openly, with impunity, without discouragement: Nay, the persons from whom the mischiefs arise, are suffered to form themselves into seminaries, to propagate Atheism and other hellish principles, are let into the administration, they are in places, places are given them as the reward of betraying their parties, they engross all places, they are persons of characters and stations, nay, they are chief.

Nor is this done in any representation to those, that by making new laws, or putting in execution the old, might regularly cure the mischiefs; but in a popular harangue from the

* Exception had been taken, that the word 'are' might carry the reflection to the counsel and solicitor assigned by the Lords to assist Dr. Sacheverell, who were also at the bar. *Former Edition.*

pulpit: Not in terms of lamentation, not as grounds of humiliation, or in a language that might become one that thought the only arms of the Church to be prayers and tears; but with all malice, bitterness, reviling, insolence, endeavouring to raise in his auditors the passions himself puts on, and pointing out (as far as he dares) to arms and violence for a cure, and not so much as offering any other.

These are the colours in which he paints our condition; and thus he chuses to shew the zeal and duty he professes to the best of queens.

But since he pretends in great measure to deny or evade the charge, it may not be amiss to look a little more particularly into his Sermon, and take a view of the scheme of it, and of several passages therein.

The crime he professes to show the mischiefs of in his Sermon, is False Brotherhood: The method he proposes to treat it in is,

1. To describe the crime, and to show who are False Brethren, and upon what accounts; and he considers it both with respect to the Church and to the State.

2. To show the dangers: And,

3. The guilt and folly of this sin. And,

4. (That it may appear that all the crimes and all the treacheries he mentions are not mere suppositions, but realities, at this time,) he undertakes, as a "consequence of all, to shew what mighty reason we have at all times, more especially at present, to stick to the principles of our Church and Constitution, and to beware of, and mark all those False Brethren who desert or betray them."

I believe the first clause of this Article will so clearly be proved from the passages that more directly concern the second and the third, that I desire, for saving your lordships' time, to begin with those two clauses, and then to return to the first afterwards.

I begin therefore with the second clause, "That the said Henry Sacheverell, in his Sermon and Books, doth falsly and maliciously suggest, that there are men of characters and stations in Church and State, who are False Brethren, and do themselves weaken, undermine, and betray, and do encourage and put it in the power of others, who are professed enemies, to overthrow and destroy the constitution and establishment."

To make this out, I beg leave to observe, that in entering upon his second head, that is, to shew the great peril and mischiefs of these False Brethren both in Church and State, he asserts, pag. 15. "That they weaken, undermine and betray in themselves, and encourage and put it in the power of our professed enemies to overturn and destroy the constitution and establishment of both." This, therefore, runs through his whole discourse; and, being affirmed of False Brethren in general, must be very applicable to every sort of False Brother. If then there be any persons of characters and stations whom he represents as False Brothers, then he has, in the place mentioned, affirmed of them, and undertaken to prove, that "They weaken, undermine and betray, and put it into the power of others to overturn and destroy the constitution and establishment."

And as to that, he comes under his third head, pag. 21, to show the malignity and guilt of this sin, in respect of the world, and begins it thus, (page 21, 22.) "What a vast scandal and offence must it be to all persons of piety and integrity, to see men of characters and stations thus shift and prevaricate with their principles, and starting from their religion, upon any occasion of difficulty or trial, and like the disciples flying from and forsaking our Saviour when his life lay at stake; to see men's opinions sit as loose almost as their garments, to be put on or off for convenience: what can unwary persons conclude from this tergiversation and hypocrisy, but that all religion is state-craft and imposture? That all godliness is gain, and that the doctrines of the Church lie not so much in her articles, as her honours and revenues?"

This is a full charge of False Brotherhood upon those persons of characters and stations, and exemplifying in them the malignity of that crime, which is the subject of his discourse: The consequence is plain, that he here charges them with False Brotherhood; and having before asserted, "That all such False Brothers weaken, undermine, and betray, and put it into the power of others to overturn and destroy the constitution and establishment;" he has not only suggested, but maintained, "that there are persons of characters and stations that weaken, undermine and betray, and put it into the power of others to destroy the constitution and establishment."

In his Answer put in before your lordships to the Articles of Impeachment, he would divide the charge in this clause; and (1). As to the suggesting that there are such persons who are False Brethren, he says, That if he had said there are persons of characters and stations that are False Brethren, not restraining it to the highest, it would not be either false, malicious, or highly criminal.

(2.) As to the weakening, undermining, and betraying in themselves, and putting it into the power of professed enemies to overturn and destroy the constitution, he says, he has not suggested that of persons of characters and stations; but the mention of those persons, and the expression of weakening and betraying in themselves, and enabling others to destroy the constitution, are twelve pages asunder.

(3.) He mentions some, which he thinks do weaken and betray the constitution, but has not said any of them are men of characters and stations.

In answer to these glosses, I might say, that if this were meant, not of the highest characters and stations, nay though it were true too, the affirming this of them would be criminal, and in the manner he does it, highly so. All subordinate magistrates, of whatever station, may be regularly complained of, and called to account; but the meanest are not to be tra-

duced and libelled, nor the government upon their accounts.

But this I offer, The words, if not restrained to those of highest characters and stations, neither are they restrained to the lowest; and, in truth strike all, and so were intended, as other parts show.

It is no excuse, if he scandalizes persons of the highest characters and stations, that he does not scandalize them only.

It is no excuse, when he speaks opprobriously, in general terms, of men of characters and stations, without distinguishing to his auditory, to distinguish upon his defence, and pretend he meant only some few of the meaner sort; that is, that when he was speaking of the mischief and malignity of this crime, and showing how great it was, his assertion concerning men of characters and stations in general, was meant only of those, in whom the mischief and malignity is least.

No, it is a general arraignment of the government throughout, and as such he must answer for it. And to put this out of doubt, he has told us, page 26, in Scripture words, That the Church's adversaries are chief.

For what he talks of several senses, in which he says he takes False Brethren in the Sermon, it is not at all material in what sense he charges those persons with False Brotherhood, if in consequence thereof, he charges them with betraying the Church, and empowering its enemies to destroy it. The charging them with being False Brethren had been a fault, as that is a term of reproach, which, with him, carries just as much malignity as he pleases, even to something analogous to the sin against the Holy Ghost, and rendering them the worst of demons. But the stress of this accusation, is the treachery they are charged with as False Brethren.

2. In the next place, therefore, he denies that part of the charge; and for this shrewd reason, that the two expressions are twelve pages asunder; An answer I admire to see put in upon so solemn an occasion! As though the False Brotherhood he shews the danger of, and the False Brotherhood he shews the malignity of, had no relation to one another, because twelve pages asunder.

3. He mentions some that he affirms to be weakeners and betrayers, &c. but says he does not suggest those to be men of characters and stations. All the inference to be drawn from that, is, either that there are, besides those some other weakeners and betrayers that are men of characters and stations; or that some of those are men of characters and stations, though he hath not said so; which is no excuse for him. For though he hath not described every sort of weakener or betrayer, and though he hath not told us which sort of weakener or betrayer he ranks the men of characters and stations under; yet he has in general charged men of characters and stations with False Brotherhood, and as False Brethren to be weakeners and betrayers, &c.

In the next place, I would lay before your lordships the proof of the third clause of this Article, which says, "That Dr. Sacheverell charges her majesty, and those in authority under her, with a general male-administration." Every part of the Sermon makes out this, representing the whole nation in the utmost disorder and confusion, and the magistrates, instead of applying a remedy, rather increasing the distemper.

Page the 14th is a very home and direct charge upon the government. It comes under that part of the Sermon, where he is describing False Brethren with relation to the state; and when he has declared very largely what they do and what they hold, he goes then to what they are suffered to do: He says, "These False Brethren in our government do not singly in private spread their poison; but (what is lamentable to be spoken) are suffered to combine into bodies and seminaries, wherein Atheism, Deism, Tritheism, Socinianism, with all the hellish principles of Fanaticism, Regicide and Anarchy, are openly professed and taught, to corrupt and debauch the youth of the nation in all parts of it, down to posterity, to the present reproach and future extirpation of our laws and religion."

The suffering these things is a direct charge upon the administration; and he in effect declares it so, when he concludes, that this is to the reproach of our laws and religion; that is, of those that do not mend, or do not execute the law: And he brings it home to the first clause, when he declares the consequence to be the extirpation of our laws and religion.

The passage I before read, page 22, concerning persons of characters and stations, likewise proves this: For what can be a greater charge upon the administration, than to accuse the ministry of putting into public stations False Brethren, that betray the Church and impower others to destroy it? That the expression there is so general, as to reach all in public stations, I have before observed; and that it is so meant, may be thus made plain. In the same passage he is apprehensive that those persons' behaviour should give occasion for believing religion to be but state craft; that is, a stratagem used by the state to serve its own ends: "That the doctrines of the Church lie not so much in its articles, as its honours and revenues;" which honours and most tempting revenues are in the hands of the crown, and those that are biassed by them must be biassed by the crown and the administration.

Page 23. "A False Brother is represented as relinquishing his old friends and principles, and betraying his own party for the little sordid lucre of place or preferment." Here is a plain representation of a villain selling his conscience; the price is place or preferment, the buyer that pays him that price, must have the disposal of those places and preferments; so that those False Brethren are not only suffered, but made such by the administration.

That the False Brethren, which he mentions, as put into places, are put in by our go-

vernors, he plainly suggests, page 18, when he bids the governors consider whether they are fit to be intrusted, especially with the guardianship of our Church and Crown: for to what purpose is that qualified admonition, if the governors put such persons into no places at all? Admonitions to temporal governors, with respect to mere matters of government, tend only to affront them, if present, but can have no other effect, when they are absent.

Let the Preface to the Derby Sermon, without any observation or comment upon it, conclude this head: "Now, when the principles and interests of our Church and Constitution are so shamefully betrayed and run down, it can be no little comfort to all those, who wish their welfare and security, to see, that notwithstanding the secret malice and open violence they are persecuted with, there are still to be found such worthy patrons of both, who dare own and defend them as well against the rude and presumptuous insults of the one side, as the base undermining treachery of the other." For I omit to repeat what has been observed upon the third Article, or upon the former clause spoke to by myself.

I return now to the first clause of this Article, which runs thus: "That he suggests that her majesty's administration, both in Church and State, tends to the destruction of the Constitution."

This is made out from what has been said on the other two; for, if men of characters and stations in Church and State, that betray our constitution, and encourage and enable others to destroy it, come into their places through the administration; if the general male-administration of her majesty and those in authority under her, consist in part, in preferring and encouraging, at least not discouraging those persons that betray and destroy the constitution; the necessary consequence is, that all those fatal mischiefs complained of arise from the administration, which therefore plainly tends to the destruction of the constitution.

Besides, having involved all those, in this description of False Brotherhood, who defend Toleration; and having declared the Church's adversaries chief: considering who is chief, and what promises have been made for continuance of the Toleration; his insolence ought to be treated rather with indignation and contempt, and a just punishment, than vouchsafed an answer.

As to the next clause; "And as a public incendiary, he persuades her majesty's subjects to keep up a distinction of factions and parties, instils groundless jealousies, and foments destructive divisions among them, and excites and stirs them up to arms and violence;" it is sufficient in short to say this:

What he advances against the foundation of the present establishment, and against the administration, is as an incendiary.

That he persuades men to keep up distinctions, and instils groundless fears and jealousies among them, is plain, from the drift of all he says; from his language of forsaking old friends and principles, betraying their party, which he makes to be the great crime of those in places, and goes to shew the folly of it, pag. 23.

And though he pretends, in his Answer, that he invites schismatics into the Church, it is only on those terms, that they comply with his notions to a tittle: he makes no allowance for human frailty, for prejudice or ignorance, and in some instances expressly disallows them; and those who are so weak as to fancy the Church in any particular not to be in the right, though in all others they would sincerely and constantly conform to it, even they must continue schismatics still: if, with these mistaken opinions, they communicate with the Church, they are False Brethren, and as such to be abhorred: and yet if they do not, they are not to be tolerated.

Nay, whoever has so much compassion for such a case, as to think it might be tolerated, is a False Brother too, as defending Toleration, which is giving up one point of the discipline of the Church, and encouraging the schism.

For, though he seems in words to approve of an indulgence to consciences truly scrupulous, yet in reality he approves none; since he admits not any one to have a conscience truly scrupulous that differs from him, but all such are False Brethren, villains, and to be stigmatized with all the other names of reproach he is so liberal of.

As to fears and jealousies, those are naturally produced by these representations of the dangers the Church and Constitution are in; and as those dangers are merely imaginary, those fears and jealousies are groundless.

As to his inciting her majesty's subjects to arms and violence, that he does it is most manifest.

The spreading among the people such hideous representations of an evil government, such outcries of the Church and true religion being undermined, betrayed and exposed by those in the administration, naturally tend to rebellion. And therefore at common law, as we find it expressed in our law books,* to bear the people in hand (I give the very words) that the king's government was erroneous, heretical or unjust, whereby the manner of the government was arraigned or impeached, was high-treason.

The passion, heat and violence in this Sermon preached in public, could be intended for nothing else but to raise the passions of those that heard it.

The people are called upon to put on resolution and courage, they are assured the cause at present requires the bravest resolutions; he exhorts them to contend earnestly for the faith; having elsewhere shewn against whom, against False Brethren, against the enemies he had described, such as have places and pre-

* In Williams's Case in this Collection, vol. 2, p. 1085.

ferments, are men of characters and stations; such as are chief and at present prosper, and denounces woe against the fearful heart and faint hands.

The expression of standing by her majesty with lives and fortunes, and of sacrificing them in her service, being now become a familiar phrase, for assisting her in war, those expressions are affected.

In the Dedication of the Derby Sermon he extols those, who are for maintaining what he calls forsaken truth, with their lives and fortunes.

And in the Sermon at St. Paul's, p. 9, 10, the readiness to sacrifice lives and estates in vindication of the Church, is represented as so noble a resolution, that in comparison to that, obedience to her precepts, that is, a good life, is but as the one thing necessary in the gospel, only an extraordinary pitch of perfection, only as the selling all his goods, and giving the price to the poor, was to an exact observance of the whole moral law.

But in the dedication of the St. Paul's Sermon he seems to avow this design; he pretends not his Sermon to be Christianity, but owns it to be politics; not preaching peace, but sounding a trumpet. For he states the objection, "That the pulpit is not a place for politics, and that it is the business of a clergyman to preach peace, and not to sound a trumpet." What is his answer? Does he deny the objection to extend to himself? No, he admits it, and justifies it by pretence of a divine command, and treats the maxim laid down in the objection with scorn, as contrary to the express Word of God.

In his Answer to this last part of this clause, he seems first to represent it as inconsistent with his position of the utter illegality of Resistance to the supreme power on any pretence whatsoever, and with his professions of loyalty to her majesty; and then attempts to confute it (as his expression is) by a passage in the Derby Sermon.

As for the latter, I think it rather a justification of the charge; for the passage asserts, That every man has, by God and nature, a commission to engage the enemies of the constitution; that is, (as he has painted them) the queen and her ministry.

The other is founded on a supposition that he is never inconsistent; a very civil compliment to himself, but as it happens very false.

But to consider this part of the Answer a little more particularly. As he has here managed the matter, I own there is in this particular no inconsistency. We say, he has stirred up her majesty's subjects to arms and violence: he says, he has declared all Resistance unlawful; yes—all Resistance to the supreme power; but he has never declared Resistance to her majesty unlawful. He maintains the utter illegality of Resistance on any pretence whatsoever to the supreme power, but no where says, that in the supreme power he includes her majesty, or that it is illegal to resist her. The utter illegality of Resistance to the supreme power, upon any pretence whatsoever, her majesty's professed enemies will come into, and labour for; meaning only to condemn the Resistance that was made against king James the second, which brought about the Revolution, and any Resistance that shall be made against the Pretender, whenever he comes; and Dr. Sacheverell goes no further.

Those enemies of her majesty have, ever since the Revolution, made it their business to blacken it, to raise scruples in people's minds about it, and to make the administration odious: the same methods are advanced by Dr. Sacheverell into the pulpit; and if those methods are to appear in the greatest assemblies, on the most solemn occasions; if the Revolution must be attacked on a day when her majesty has appointed it to be commemorated; if her majesty's reign is to be arraigned in public, and an appeal made to the passions of the people; let it be attended with what professions it will, it equally strikes at her majesty and the establishment; and the Commons could not but think themselves obliged, in duty and gratitude to her majesty, and in justice to the whole nation, to call him that used them thus to a public account: and let this gentleman commend his own loyalty as much as he pleases, it is plain that in this Sermon he is doing the very same work, and in the very same method, with those that disown allegiance to her majesty.

My lords, permit me to observe a little his management of this text: Supposing the Doctor to be right as to his doctrine, and that he believes himself to be so; and that he is sincere in his professions of loyalty to the queen. For I am not now going to dispute or limit the doctrine of Non Resistance, which was the business of those gentlemen that spoke to the first Article.

By False Brethren in the text of this Sermon were meant, those who pretended to be Christians, but really were not. Dr. Sacheverell seems so to understand it; and therefore to declare those to be False Brethren in the Church, that pretend to be of the communion of the Church of England, but are not; that live in its communion, but own not its doctrines and authority. By like analogy, False Brethren in the State are such, that perhaps swallow the oaths to the queen; or if they go not so far, yet take the benefit of her laws, her courts, her protection, yet deny her allegiance, and are for another prince. A just and well-managed reproof of these had been a noble topic for one that pretends all this zeal for the queen. But they are wholly passed by, they are not to be blamed, there is no danger from them either to Church or State. Who then, according to the Doctor, are False Brethren in the state? (He was hard put to it to substitute some others in their place.) They must be only those who one way or other oppose the doctrine of Non Resistance upon any pretence

whatsoever, whom he describes in several invidious instances, and in all possible terms of reproach. This seems strange.

1. This being, as he states it, an error in a doctrine of the Church, the holding it is only one branch, one instance of False Brotherhood in the Church; and therefore not so proper to stand for a distinct head of False Brethren in the state.

2. The bare denying or not believing the doctrine of Non Resistance, supposing it true, does not denominate a man a False Brother in the state.

Suppose then a man own the queen's title, be satisfied with her administration, in love with her reign, convinced that she has principally at heart his interest, and the true interest of all her subjects: believes that upon the continuance and quiet of her government depends the preservation of our liberties, and those of all Europe, and accordingly obeys and serves her with sincerity and zeal, and thinks all Resistance to her utterly unlawful; is this man a False Brother in state, a rebel, a traitor, because he thinks Resistance was lawful at the Revolution, and may be so whenever the same breaches of the constitution are repeated?

Is he a rebel to this queen, because there possibly may happen a case, wherein he may resist another prince, if that prince should do what he is sure she never will?

At most, that mistake only exposes such a person more easily to be misled: he may be in more danger of becoming a rebel to a prince he shall be dissatisfied with, but is not therefore a rebel to a queen he loves.

How then comes this single instance of False Brotherhood in state to be insisted on, which at most shews, not that the person is, but only that perhaps he may become a False Brother; and those instances passed over, where persons plainly are False Brethren in state?

Further, this doctrine being, as the Doctor says, a fundamental doctrine in state, urged with warmth and vehemence, one would expect some inference to be drawn from it: One would expect that he, who had so great a zeal as the Doctor professes for her majesty, and had so triumphantly established absolute Non Resistance, would have fallen in so far with the business of the day, and have made so much use of his favourite doctrine, as to dissuade from rebellion; and when he had taken notice of these false steps in the administration, that he should have persuaded the people to make proper applications for redress, but to be careful not to let the faults of the ministry cause them to forget their duty to the queen. But there is not the least exhortation to that purpose.

All this seems strange, taking it for granted that the Doctor is sincerely zealous for the queen.

Give me leave, therefore, to make another supposition: suppose this zeal is but pretended to the queen, but really for another, and that he thinks the other his rightful prince; your lordships will find all consistent, every expression, and the whole procedure exactly just.

In consequence of that concealed sentiment, though he dare not directly commend those who own the Pretender, yet neither will he reprove them as False Brethren in the state; they being, according to his opinion, the only persons who perform their duty in it. Therefore the true notion of False Brotherhood must be dropt; and instead of it, they that hold Resistance lawful in cases of extremity, and particularly in that of the Revolution, are to be fallen upon; for they are really rebels and traitors in his sense, because they directly overthrow all the title which the disaffected here would fancy for the Pretender.

As long as the Revolution stands unimpeached, that person can have no title, let his pretence be as favourable as he pleases: if the Revolution stands, the laws which are founded upon it stand too; and those laws concerning the right and succession of the crown, are absolutely binding; and therefore, whatever right he could wish people to believe him to have, all that right, all that pretence of right is as effectually barred, as all the right which those who stand in the course of descent before the princess Sophia of Hanover would have had but for the Act of Settlement, will be bound, whenever God, for our sins, shall take from us her majesty without issue.

This principle therefore is fundamental to the Pretender; and, taking the matter thus, accounts for all that rage against those that dispute this doctrine, as extended to the case of the Revolution, for his so often repeating this to be the basis, the fundamental principle of the constitution.

This shews clearly, why neither in the Sermon, nor Defence, he has once maintained the illegality of Resistance to her majesty.

This shews, why this fundamental principle is so totally forgot to be pressed by him upon the people; no inference from it, that those mismanagements ought not to make them forget their duty to the queen: not one persuasive to obedience to her; not one admonition against the consequence of False Brotherhood in the state, that it was apt to make people rebel; no cooling the people, with telling them that prayers and tears were the only arms of the Church; that they ought to do their own duty, submit wholly to the queen, and those in authority under her, and leave the rest to God. These were the natural consequences of this doctrine of Non Resistance so violently contended for, but not one of them pursued or mentioned.

And perhaps this made him chuse to describe the case of our Church, p. 26, in the words of the prophet in the Lamentations, which are in ch. 1, ver. 4, 5, (though not truly cited in his printed Sermons) "The ways of Sion mourn for a time, and her gates are desolate, her priests sigh, and she in bitterness, because her adversaries are chief, and her enemies at present prosper."

My lords, that book was wrote just after Nebuchadnezzar's taking Jerusalem; and the condition of the Jews then, which is thought proper by him to give an image of ours now, was this:

They were inslaved, their king in a foreign country, stripped of his crown, and the prince then reigning was an oppressor, that had no other title but possession and force.

Thus has the Doctor, out of his tender concern for her majesty's person and government, thought fit to express his sentiments.

The last part of this charge is that of wresting and perverting divers texts and passages of Holy Scripture. This may not perhaps seem so proper for me to speak to; but being part of my province, I shall apply to it without any apology.

My lords, as wicked and corrupt as Dr. Sacheverell would represent this nation, he very well knew, that the Holy Scriptures are had in that just veneration and regard, that whatever is cited thence has a particular influence upon the minds of the people; whatever story can be brought thence as a parallel, whatever expressions taken thence are made use of, to paint the beauty, the deformity, the dangers of the preacher's subject, give a strong impression, fire the zeal of the people, alarm their passions, and make them fancy they hear the voice of God, when they hear his words repeated.

This the Doctor knew, and your lordships will see what use he makes of it.

When he speaks of the perils of the Church, which her majesty, your lordships, and the Commons could not see, the Scripture is to be searched for a story, that may be brought to match the case, and to give an opportunity under other names, to speak a bold falshood concerning all these.

It happens there is one remarkable story in the Holy Scripture about a mistake of danger, but unfortunately it suits not the case, as told there; however it gives a handle, and he can make from it a story to his purpose.

Accordingly he says, p. 21, "When Elisha, the great prophet of God, was surrounded with an host of enemies that sought for his life, his blind servant beheld not the peril his master was in, until his eyes were opened by a miracle, and he found himself in the midst of horses and chariots of fire."

This story thus told is extremely happy for him; for hence the people are to understand him to be the inspired prophet; and the Queen, Lords and Commons, blind at least, though not his servants.

But the story in holy writ is directly contrary; and it was only the blind servant fancied they were in danger, when really they were not.

The story is in 2 Kings, chap. vi, and, as told there, is thus: The king of Syria, at war with Israel, being informed, that what he said in his bed-chamber was told to the king of Israel by Elisha the prophet, resolved to seize Elisha; and hearing he was at Dothan, ver. 14, (I now give your lordships the very words) "He sent thither horses and chariots, and a great host, and they came by night, and compassed the city about." Ver. 15, "And when the servant of the man of God was risen early, and gone forth, behold an host compassed the city both with horses and chariots: and his servant said unto him, Alas, my master, how shall we do?" [This is the blind servant, that the Doctor says saw no danger.] Ver. 16, "And he answered, fear not, for they that be with us are more than they that be with them." Ver. 17, "And Elisha prayed, and said, Lord, I pray thee open his eyes, that he may see. And the Lord opened the eyes of the young man, and he saw; and behold the mountain was full of horses and chariots of fire." The Doctor's exposition is, that this heavenly guard, these horses and chariots of fire, which were there only to defend the prophet, were to destroy him; and from them arises the danger, which the Doctor fancies the miraculous opening the servant's eyes disclosed to him.

I think I may give the Doctor his choice, what this proceeded from, whether from his not knowing this passage, but taking it upon hear-say, or his resolution knowingly to pervert it?

The next passage is, p. 26, the words of St. Paul, Eph. vi, with which, after a discourse where all the social and good-natured virtues are taught in the highest perfection; where he had recommended, chap. iv, ver. 2, "lowliness, meekness, long-suffering, forbearing one another in love; endeavouring to keep the unity of the spirit in the bond of peace:" Where he had commanded, ver. 31, that all "bitterness and wrath, and anger and clamour, and evil-speaking be put away, with all malice:" and ver. 32, that those to whom he writes should be "tender-hearted, forgiving one another, even as God for Christ's sake had forgiven them:" Ver. 27, That had forbidden giving place to the devil, but not to any other. The apostle concludes, that in this spiritual warfare, and that they "might be able to withstand the wiles of the devil, they should put on the whole armour of God; because they wrestled not against flesh and blood; but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickedness in high places."

This gentleman after a discourse full of bitterness, reviling, wrath, clamour and evil-speaking, forbearing no man in love, nor forgiving any that differs from him one tittle; and having shewn other devils incarnate, (page 23, 25,) the worst of dæmons, other powers, others in places and stations, against whom his auditors were to contend earnestly; repeats those words, not in the spiritual sense the apostle used them, but (as the whole subject and drift of his discourse shews) as an odious description of the government, in Scripture words: and whether he meant the armour in the apostle's spiritual sense, any more than any of the other words there, or whether he intended it a literal

earthly armour, which the cause would make the armour of God, I leave to your lordships to determine. However, it is no defence for him, what he says, that the arms of Resistance to princes is no part of the spiritual armour recommended by St. Paul; because he has plainly departed from St. Paul's spiritual meaning.

And that this is his meaning, to paint here our present circumstances in scripture language, is further plain from what follows: That the Church is bleeding of the wounds which she has received in the house of her friends; borrowed from Zach. xiii. ver. 6, that the "ways of Sion may mourn for a time, and her gates be desolate; though her priests sigh, and she in bitterness, because her adversaries are chief, and her enemies at present prosper." I have before observed, from what circumstance of the Jews this image is borrowed; and your lordships will take notice, what changes in the expressions he has made, to render them more emphatical.

My lords, there can be no greater perverting of Scripture, than to make use of the language of the Holy Ghost, to revile our neighbours, to scandalize the government, and to raise wrath, sedition, and rebellion in the people.

The last I shall mention, is that in the Dedication of the St. Paul's Sermon; where proposing it as an objection, that it is the business of a clergyman to preach peace, and not to sound a trumpet in Sion; he affirms that to be expressly contrary to the command of God; and to prove that command, cites these words, Cry aloud, and spare not, which are in Isa. lviii. 1.

My lords, this I apprehend to be not only perverting, but that to men of understanding it will seem ridiculing Scripture. To infer, that because they were to speak loud, they were to sound a trumpet, seems ridiculous.

Or if he had cited the rest of the words, "Cry aloud, and spare not; lift up thy voice like a trumpet, and shew my people their transgression, and the house of Jacob their sins;" he had indeed found the word trumpet, but little to his purpose; for because the prophet was to imitate a trumpet in the loudness, that the people might hear; was he to imitate it too, as it is an instrument of war, that they might prepare themselves for battle? Because he was loudly to tell them their own sins, that they might repent; was he likewise to trumpet to them the faults of the government, that they might take up arms, and redress them by rebellion?

If he find any other place in the Old Testament to command the priests to sound a trumpet, I shall refer him to the 10th of Exodus, where he will find the priests were literally to sound the silver trumpets in the army, in the field; but he will not find, they ever sounded it from the pulpit.

My lords, I shall offer nothing further to your lordships on this head, though there is room for it.

But there are two things in the Answer to this Article, I cannot omit taking notice of.

The first is in his Answer to the first part of this Article, that charges him with suggesting, That her majesty's administration, in Church and State, tends to the destruction of the constitution; where he takes great comfort, that in this Article he is charged not with suggesting and maintaining, but suggesting only; and hopes that bare suggestions or insinuations, shall not involve an English subject in the guilt and punishment of High Crimes and Misdemeanors. I do not envy him his comfort, nor shall labour to take it from him, though it seems strangely founded: for though it is expressly said, that he charges her majesty with a general mal-administration; though the accusation be positive, that as a public incendiary, he persuades the subjects to keep up parties, foments divisions amongst them, and stirs them up to arms and violence, and perverts divers texts of Scripture; notwithstanding all these positive charges, yet the first expression happening to be only 'suggest,' and not 'maintain,' it seems he is very happy in it.

But, my lords, this is an extraordinary step; that let a man cast never so many scandals and reproaches on the government, though in never so public a manner, yet if it be done by way of suggestion and insinuation, and the charges not expressly maintained and avowed, there is no crime in it, or not any high one. That is, in short, sedition, and exposing the government is lawful; only the manner is to be taken care of. Do not do it directly and avowedly, for that would be dangerous; but do it by suggestions, that every body will understand, and which will have their full effect, and all is safe: for those that come to judge you, are not to understand you, though every body else does.

My lords, here are two extraordinary claims of right before your lordships, and of great consequence, if you allow them; one, that the clergy may sound a trumpet in Sion in a military sense, and are not to be restrained to the preaching of peace; the other, that every Englishman is at liberty to asperse the government at pleasure, by whatever suggestions and insinuations he pleases; and these made by a warm advocate for Passive Obedience, the most peaceful and submissive doctrine in the world.

My lords, in the case *de libellis Famosis*, in the Fifth Report, there was a prosecution for a libel, not indeed set forth at large in the printed book, (as was not fit) but thus far particularly taken notice of, that it traduced and scandalized one person dead, and him an archbishop too, by descriptions and circumlocutions, and not in express terms; and nobody ever doubted but it was criminal. But though there should be a greater strictness observed in respect of private persons, yet when the queen and government are concerned, when all lies at stake, a man ought to guard himself and his expressions, not to touch in the least there: and every man that is truly loyal, and desires the peace of his

country, will do it. And knavish designers against the public peace, are not to be suffered to go on is overthrowing it, because they have contrived crafty ways of doing it.

I mention this only to oppose the present claim; though, in our case, the reflections are plain and full.

The other is his lamentation at the close, which I cannot but take notice of, as an insolent reflection on the honour and justice of the House of Commons. "Hard is the lot of the ministers of the Gospel, if, when they cite the word of God in their general exhortations to piety and virtue, or in the reproofs of men's transgressions, or when they are lamenting the difficulties and conflicts with which the Church of Christ, while militant here on earth, must always struggle, the several texts and passages by them cited shall be said to have been by them meant of particular persons and things, and shall be considered in the most criminal sense, and be made (by such construction) one ground of an Impeachment for High Crimes and Misdemeanors."

My lords, this was put into the Answer, not by way of defence, but to make that use which has been made of it, to print it before it came to be considered, and lay hold of that as an handle, as has been done, to say, Dr. Sacheverell has been prosecuted only for doing his duty as a clergyman; which is a scandalous reflection.

Is the story of Elisha, as told by him, an honest citation of a passage of Scripture?

Are enemies that are chief, and the adversaries that at present prosper, no particular persons now in being; though to the Scripture expression, he has added the words 'at present,' for fear the application should not be close enough.

Is this Sermon an exhortation to piety and virtue? Or is it not manifestly a trumpet to rebellion? Is it a shewing the audience their own faults, that they may cure them, and amend their lives? Or is it not plainly the exposing the faults of others, the faults of their governors, that they may hate the persons?

Even the doctrine of Passive Obedience, is it here so warmly contended for, that people may be dutiful and submissive? Or that they may be enraged against those that deny it? In short, is there one Christian virtue taught in it, except your lordships will honour with that name the sticking, not to the Church and Christianity, but (according to the Doctor's own expression in another place) to a party? and courage, not only a passive, (which he no where recommends) but an active against the government, to which the whole discourse incites?

My lords, the Commons have the greatest and justest veneration for the clergy of the Church of England, who are glorious through the whole Christian world for their preaching and writing, for their steadiness to the Protestant religion, when it was in the utmost danger. They look upon the order as a body of men that are the great instruments, through whose assistance the Divine Providence conveys inestimable advantages to us. They look upon the Church established here, as the best and surest bulwark against Popery; and that therefore all respect and encouragement is due to the clergy: and it is with regret and trouble, that they find themselves obliged to bring before your lordships, in this manner, one of that order.

But when we consider Dr. Sacheverell stripping himself of all the becoming qualities proper for his order, nay, of all that peaceful and charitable temper which the Christian religion requires of all its professors, deserting the example of our Lord and Master, and of his holy Apostles, and with rancour and uncharitableness, branding all that differ from him, (though through ignorance,) with the titles of hypocrites, rebels, traitors, devils; reviling them, exposing them, conducting them to hell, and leaving them there; treating every man that falls in his way, worse than Michael the archangel used the devil; coming himself more near the character in St. Jude, (part of which he would apply to others) despising dominion, speaking evil of dignities; like raging waves of the sea foaming out his own shame; forgetting (when his text and his doctrine led to it) to recommend the peace of his country, in a time when all Europe is in war, and nothing can preserve us from falling into the hands of the grand enemy and oppressor, but our unanimity under her majesty: then labouring to sap the establishment, and railing and declaiming against the government; crying to arms, and blowing a trumpet in Sion, to engage his country in seditions and tumults, and overthrow the best constitution, and betray the best queen that ever made a people happy: and this with Scripture in his mouth!

The Commons looked upon him, by this behaviour, to have severed himself from all the rest of the clergy, and thought it their duty to bring to justice such a criminal; and are in no fear of being thought discouragers of those who preach virtue and piety, because they, in the supreme court of justice, prosecute him that preaches sedition and rebellion; or to have any design to lessen the respect and honour that is due to the clergy, by bringing him to punishment that disgraces the order.

Mr. Secretary *Boyle*. My lords, I am commanded by the House of Commons, to have a share in maintaining the Articles of Impeachment against Dr. Sacheverell; and it falls to my lot to speak to this Fourth Article, which contains no less a charge, than endeavouring to excite and stir up her majesty's subjects to arms and violence.

The ground of this accusation, is the Dedication of a Sermon preached at Derby at the last assizes; and another Sermon preached at St. Paul's, the 5th of November last, a day set apart to commemorate the preservation of the king and parliament from the Gunpowder Treason; and to give thanks to Almighty God for the deliverance wrought by his late majesty, in

rescuing these kingdoms from Popery and arbitrary power.

The whole nation doth now enjoy the benefit of that happy Revolution, and all the good subjects of her majesty are thankful for it. One would have thought, that on such a day, that matter should not have been so handled as only to be exposed; and I am persuaded, that whoever goes about to asperse and vilify the late Revolution, would rejoice to see another.

I shall not trespass upon your lordships' patience so far, as to repeat the many passages in the Sermon that make good our accusation, they having been so fully laid before your lordships already by a gentleman that spoke before: and indeed there is the less reason to descend into particulars, since the whole scope and design of the Sermon is to instil groundless jealousies into the minds of people, and to cast the most virulent reflections imaginable upon her majesty's administration.

One might supppose, from the Doctor's discourse, that the Church of England was now suffering under the most severe persecution; that the laws were no longer in force; and that the whole government was unhinged. Aspersions more violent could not be used, if we lived in the reign of the worst of heathen emperors, while we are partakers of so many blessings under the government of the best of queens.

The prisoner at the bar lays some stress upon the word 'suggest,' as expressed in the Fourth Article, which has already received an answer: and would insinuate, that there are no plain words in the Sermon to support the charge. But if that objection were true, which we are far from admitting, and the consequences drawn from it were allowed, I must say, hard would be the case of the government, if men might make the most odious suggestions against it, and cast reflections with impunity, under the shelter of some doubtful expressions, and equivocal sentences, at the same time that the sense and malice of the reflections are plain to be understood, and can hardly be mistaken.

He doth indeed affect in his Answer, and in one part of his Sermon, to profess great duty to her majesty; but let those expressions be compared with the calumnies that are heaped upon her administration, and I conceive they will not mitigate his crime, and will avail him no more than the pretence that he makes to be for Liberty of Conscience, when he condemns the Toleration. I believe these excuses will equally weigh with your lordships, and his sincerity in both will equally appear.

My lords, it is no new thing among those who design to stir up sedition, to bestow great encomiums on the person of the prince; it has been a common practice, and the same method was pursued in the late unhappy times. The incendiaries of those days pretended, that the Protestant religion was in danger under that government, as the enemies of our constitution cry the Church is in danger under this.

But, my lords, every thing is in danger from such seditious discourses. What a scene of distraction and wickedness is here displayed to the understandings of the people, to excite and inflame them to sedition and rebellion! Who can sit still, if they are persuaded that the altars and sacraments of our Church are prostituted to Hypocrites, Deists, Socinians, and Atheists; and this done with impunity, and without discouragement? What can be more provoking to all good Christians and good subjects, than to be told that people are suffered to combine into bodies, and seminaries, wherein Atheism, Deism, Tritheism, Socinianism, with all the hellish principles of Fanaticism, Regicide, and Anarchy, are openly professed and taught?

No man can think he is long to enjoy his religion, liberties, or property, if he can be made to believe, that the foundations of the Church are undermined, and the government endangered, by filling it with its professed enemies. What is the meaning of all this, but only to make out, that her majesty's administration, both in ecclesiastical and civil affairs, tends to the destruction of the constitution? And what must be the consequence of such an opinion instilled into the minds of the people, but black and melancholy thoughts, seditious practices, and, at last, open force and violence?

The priests must cry aloud and spare not, they must blow the trumpet in Sion; and we are told, there are those that have lives and fortunes to maintain such truths as Dr. Sacheverell has laid down. What those truths are, may be seen through the whole course of the Sermon; they are such, my lords, as we apprehend do not at all tend to the strengthening the present government, though they may be serviceable towards setting up another.

This is not the spirit of the Gospel, nor agreeable to the principles of the Church of England; and we submit it to your lordship's judgment, whether this Sermon is not seditious, and whether the prisoner at the bar is not guilty of *High* Crimes and Misdemeanors?

Mr. *Chancellor of the Exchequer.* My lords, I am commanded by the Commons of Great Britain to bear my part in the management of the Impeachment against Dr. Henry Sacheverell, and particularly on this Article. My lords, I believe after what you have heard already, you will think there is little need for me to say any thing on this head: yet I shall take the liberty to mention a few particulars.

I cannot but take notice, that in a Sermon preached on a day appointed to commemorate the blessings we enjoy by the late happy Revolution, there is not one particular clause to shew forth those blessings, or the mischiefs that were then likely to come upon us. There is a little, indeed, upon the Gunpowder-Treason; but upon the Revolution there is nothing, nor doth he take notice of the dangers we were in before it, in order to raise the devotion of the people, and their thanks to God for their deliverance. But all the tenor of his discourse is to shew the

male-administration of the government, and the dangers that have been coming upon the Church ever since the Revolution; so that it is plain, that he had no thoughts of the blessings of that deliverance, nor any dislike to the conduct of those times.

My lords, this Sermon was preached in a place well chosen to attempt mischief in. He well knew, that if he could raise an evil spirit in this great city, it would do more mischief than in another place where he had often attempted it: but, God be thanked, he was disappointed; and he owned himself, in another place, that he did not expect the thanks of the court of aldermen for it.

I shall take notice of his Dedication, where he carries on the same design, and owns it on second thoughts. He is not only warm in preaching the Sermon; but in his Dedication he shows with what spirit he composed it: he says, That "if honest gentlemen will sit still, and give up their cause for want of courage, or a just sense of the dangerous attempts of our enemies, without the spirit of prophecy we may foretell what will become of our constitution, when it is so vigorously attacked from without, and so lazily defended from within."

My lords, I shall not explain the meaning of those words, "sitting still, and want of courage;" but I cannot but take notice of these words, "The vigorous attack from without, and the lazy defence from within." I would desire to know who the Doctor takes to be the defender of the faith; and who under that defender is to protect the Church? It must necessarily be meant as a reflection on her majesty, and upon those that under her authority are to take care of the Church. The next passage is a plain confession of his seditious intentions. He tells us his business was not to preach peace, but to sound the trumpet. If a minister will declare it not to be his duty to preach peace, your lordships will easily judge what his intentions were.

I know it is the business of those that are proselytes to this gentleman, to give out that we design to narrow our obedience to her majesty. But, my lords, we are far from it; and own the greatest duty and submission to our sovereign: but we cannot bear, that a reflection should be cast upon the Resistance that was used at the Revolution; and we hope your lordships will never admit a question to be raised of the legality of it.

My lords, the Acts of Settlement of the crown depend upon that legality: if that be illegal, the others in consequence are void; and though her majesty has an hereditary right to the crown, yet I take those acts to be her great security; and I can make no question, but that if the foundations of those acts were shaken, the Doctor would soon find another hereditary right to resort to.

My lords, the Toleration is certainly grounded upon the best principles, upon a principle of religion and a principle of policy. I think every body will allow, that nothing can establish peace in a kingdom so well, as the granting ease and quiet to men's consciences. If they pay due submission to the government, they ought not to be persecuted for their religion: it is for her majesty's interest and honour. For how can her majesty be the head of the Protestant interest abroad, if Protestants are not protected at home?

It was the observation of the lord Clarendon, in his history, that some eminent clergymen pressed king Charles the first to make distinctions among persons; and that by their advice, his embassador in France was ordered not to go to the Hugonot churches there, as he used to do. He lays it as an imputation on those that gave the advice; and makes this remark, that it was with a design of an union with the Church of Rome; which proved of very ill consequence to his affairs at that time.

My lords, we take it, that it is contrary to the duty of any private man to find fault with a law in being, or to declaim against the reasonableness of the same; it is raising in the people an ill opinion of the lawgivers, and the administration.

My lords, there are some people, and I wish their numbers do not increase, who will not allow the Church to be out of danger, whilst the civil magistrate has the government of the Church. These appear publicly, and in print; they cancel the queen's supremacy, deny the authority of the laws, and erect a Church independent on the civil government. Of this Church I take the Doctor to be, and very properly for his purpose; for here he may thunder out his bulls and anathemas without controul: here is a field for him to open his commission in, where he may sound his trumpet, and not preach peace.

But, my lords, the Commons can never admit the Church as established by law, to be in any danger during her majesty's administration; it being guarded by her majesty's piety and care of it, by the reverend bishops, who are so diligent and watchful in their functions, and which will always have the utmost assistance of the Commons and your lordships, to support and maintain. As for their independent Church, I hope it will ever be in danger; and cannot but think that wholesome severities were very proper to be applied to the broachers of such seditious doctrines; they are Popish principles, and if they should obtain here, would certainly bring in Popery along with them.

My lords, I cannot conclude, without taking notice of a very unjust reflection made upon the Commons in the Doctor's Answer, wherein he charges them with designing to restrain the ministers of the gospel from doing their duty, in recommending piety and virtue to their auditors. These are doctrines so proper to come from the pulpit, that those that recommend them, will always meet with the countenance and encouragement of the House of Commons. But when a clergyman acts contrary to his function, and instead of reproving

vice and immorality, takes upon him to reproach the government; when instead of preaching peace, and charity, and other moral virtues, he takes upon him to raise jealousies, foment divisions, and stir up sedition, it is high time for the justice of the nation to put a stop to it: as such a person, we charge Dr. Sacheverell, and think we have made good our charge, and cannot doubt your lordships' justice upon the offender.

And then the Lords adjourned to their House above.

Fourth Day.

Thursday, March 2.

The Lords coming down into Westminster-hall, and being seated in the manner before-mentioned, proclamation was made by the serjeant at arms as follows:

Our sovereign lady the queen doth strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

Then another proclamation was made: Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy bail, else thou forfeitest thy recognizance.

The Doctor appearing at the bar accordingly, with his counsel as before:

Lord Chancellor. Gentlemen of the House of Commons, you may proceed in your evidence.

Mr. *Lechmere.* My lords, your lordships adjourned yesterday, when the Commons were proceeding on their fourth Article, a share of which service was appointed to me; the proofs, we insist on, in maintenance of this part of our charge, have been laid before you with great exactness; and all the enforcements they can well receive, have been already offered to you, by those gentlemen, that have gone before me; so that I find myself acquitted from giving your lordships much trouble upon it.

The charges contained in the precedent Articles, are particular and distinct; of so high a nature in themselves, and of such eminent consequence to her majesty and her government, that we have held ourselves obliged to treat each of them with all imaginable clearness and solemnity; and this, my lords, from that true zeal and necessary concern, with which the Commons, upon this great occasion, are so justly inspired, for the honour of her majesty, and the prosperity of her kingdoms.

The subject of this Article is laid down in general positions, some of which are the result and consequence of the former Articles; and this will make it necessary to remind your lordships of the passages produced in support of them: the application of them, to the several branches of this charge, is easy and obvious: the further passages, that were yesterday pointed out to you, are many in number, and the assertions positive, scarce liable to any constructions more innocent in themselves, or more favourable for the prisoner, than what hath been put upon them: but though the more flagrant parts of the prisoner's discourses have been distinguished to you, your lordships cannot fail of discerning that implacable enmity that runs through the whole: how little will your lordships find in it of the spirit of the gospel, of the temper of a Christian, or a good subject, much less of a messenger of peace? No, my lords, when the heart is poisoned, the corruption will be diffused throughout; when principles are delivered from the pulpit, that strike at the root of the present government, and our future establishment, and are taught as fundamental rules both of law and conscience; what kind of proofs, what exhortations are to be expected from such a preacher? Surely, such only as you have heard from this man, such only as may create universal dissatisfaction, will disquiet the minds, and tend to pervert the obedience of the subjects; such only as shall be most likely to cherish and cultivate those seeds of sedition, which, when sufficiently propagated, and brought up to their full growth, can terminate in nothing less than a total destruction.

My lords; I am now to acquaint you, That the Commons have gone through their charge, wherein they have been heard by you with great candour and patience: and that imperfect view, which was the best I was able to give you, in opening the charge, has been amply supplied by the great sufficiency of what has followed: and from thence, I think, I have good grounds to say to your lordships, that this impeachment of the Commons in every part of it, is substantially and effectually maintained.

And now, my lords, craving leave of the Doctor to borrow a phrase which stands at the head of the last paragraph of his Sermon, What is the result of this proceeding hitherto? In opening the charge, we considered him in the condition of a person accused; but the proofs having been produced, and the evidence being unquestionable, even from his own mouth, and by the endeavours of other gentlemen, to whose provinces the several tasks have fallen, the false colours of his discourse being taken off, and his scheme reduced to its true consistency, give me leave to represent him to your lordships in a true light, and in his proper colours.

Your lordships now see this gentleman, under the reign of the greatest and best of princes that ever wore a crown, whose title to the throne stands upon a more solid and indisputable foundation than that of any prince upon earth, guarded and defended by the best laws in the world, and the intire affection of all her true subjects, and which none can draw in question with any other design than to weaken its support:

You see him, under an establishment and constitution excellently contrived and adapted to answer all the good ends of government, and

which has withstood the open assaults of arbitrary princes, and the more crafty attempts of papal encroachments; and which, since the true religion was established among us, has been preserved in despite of the dangerous endeavours of Papists, by dividing Protestants, to make way for its destruction: A constitution, which happily recovered itself at the Restoration, from the confusions and disorders which the horrid and detestable proceedings of faction and usurpation had thrown it into, and which, after many convulsions and struggles, was providentially saved at the late happy Revolution; and by the many good laws passed since that time, stands now upon a firmer foundation: Together with the most comfortable prospect of security to all posterity, by the settlement of the crown in the Protestant line.

Your lordships have found this person, at a time when the Church of England as by law established is in perfect prosperity and safety at home, and in higher reputation abroad, than in any age that has gone before it; at a time when the nation enjoys peace and tranquillity, and all the good effects of a prudent and successful administration, demonstrated by the harmony and unanimous endeavours of all her majesty's true subjects to support it.

In the most solemn and public manner, levelling the most virulent discourse against her majesty's title to the crown, and against our present establishment, and calculated to favour the pretension of another.

Your lordships find in it the same principles revived and avowed in the same dangerous extent by him, as in a late reign by the professed instruments of Popery and arbitrary power, and applied in condemnation of the glorious work of the late happy Revolution, which delivered us from them.

Your lordships have found him arraigning the honour of her majesty and her parliament, aspersing the administration both in Church and State, and with all imaginable ardour and vehemence stirring up sedition, and exhorting to rebellion; and that in the name of Almighty God, as a person commissioned from heaven to that end, and in the most profane and prostitute manner abusing and wresting Scriptures to those impious purposes.

It is on those grounds, that the Commons have charged the crimes to have been committed by him with an intent to undermine her majesty's government, and to stir up arms and violence: And do your lordships want further evidence of this? Let us remind you of the rebellion that has been raised, and that high treason that was committed, the last night, by those persons who abet the prisoner!

I cannot aggravate the offence; your lordships will duly consider the height and quality of it; you will think of a satisfaction suitable to that, and to the just expectation of the Commons.

My lords; The nature and length of this proceeding having occasioned many interruptions, we are yet assured, that no misconstruction will be permitted by your lordships, of what may have fallen from any of us. We likewise take notice to your lordships, that the Commons have very readily acquiesced in your appointment of counsel to assist the prosecutor. Your lordships informed us in the beginning of the cause, that you did this in great benignity to him, in assigning him those counsel which he himself had asked, and doubtless such as are according to his own heart's desire: And the Commons are assured, that those gentlemen will understand that regard which is due to the nature of this cause, and to the dignity of a proceeding wherein the Commons of Great Britain appear as prosecutors.

The Commons conceive, they have reason to take great satisfaction from this proceeding, whereby they have the opportunity in the most solemn manner, before the most august judicature in the world, to assert the freedom and excellency of our government, and the justice of the present establishment: This single consideration shews your lordships of what malignity the prisoner is capable, who has thus set himself to disorder and destroy so happy and so beautiful a constitution.

We desire to put your lordships in mind of those felicities, which, in our opinions, accompany this prosecution; when we see so many of your lordships the judges of this great cause, who had so great a share in that deliverance which we are now called upon to vindicate; so many others of your lordships, the sons of those fathers who joined in it; and who have the same blood still running in your lordships' veins. And when we consider that firm and steady zeal which every one of your lordships have shewn in support of the present settlement, what doubt can we entertain of your most impartial justice?

We further observe it, as the great security of our Impeachment, that no endeavours can prevail to prevent your judgment upon it, nor any means succeed to defeat its effects.

And on the other hand, we have before our eyes the many good consequences, which that part which the Commons have taken on themselves will certainly produce; that strength and vigour it will add to the great affairs of the kingdom, and of all Europe, at this critical juncture, when the world shall see that the Commons of Great Britain, who have been so unanimous in defence and support of the common cause of peace and liberty abroad, are thus zealous to find out and extirpate that malignant humour, which alone can endanger it at home; that whilst the common oppressor feels the effects of her majesty's arms, the intestine enemies of the nation, and of her government, (in the instance of the prisoner) may see and consider the force and weight of the highest resentment of the Commons.

Those good effects will receive yet greater enforcements from your lordships' judgment; which, when it becomes public, will be an effectual confutation, or an unanswerable treatise against the pestilent doctrines advanced by the prisoner.

The firmness of your proceedings will give the same steadiness and vigour to all other parts of the administration, which will henceforward strive to imitate your lordships in so great an example; and it will strike due terror on those minds, in which the same destructive errors have taken root.

And, my lords, what comfort and peace must it bring to all her majesty's faithful subjects, to see her majesty's undoubted title, the wisdom of her administration, and the Protestant Succession, so effectually supported by your lordships' judgment!

My lords, we have thought it necessary, in discharge of the great trust reposed in us by the Commons, to go through the whole charge together, that your lordships might have it intire. I am now only to add, that they do reserve to themselves the liberty of replying to what shall be offered on behalf of the prisoner, and of every other legal advantage that shall arise to them in the progress of their Impeachment.

Lord Chancellor. Gentlemen of the House of Commons, have you gone through the Charge?—Mr. *Lechmere.* My lords, we have.

Lord Chancellor. Then you that are appointed counsel for Dr. Sacheverell, may proceed to his Defence.

Sir *Simon Harcourt.* My lords, there having been already three whole days spent by the gentlemen of the House of Commons in maintenance of their charge; and this day being so far spent, I am bound in duty humbly to represent to your lordships, that it will be impossible for us to go through the very first Article, so as to finish in any reasonable time. My lords, we humbly expect your lordships' commands.

Lords. Go on, go on.

Sir *Simon Harcourt.* My lords, we must receive your lordships' commands. We think it of great importance to go through the first Article at once, if your lordships please to give us leave.

Then the Lords adjourned to their House above.

Fifth Day.

Friday, March 3.

The Lords coming down into Westminster-hall, and being seated in the manner before mentioned, proclamation was made by the Serjeant at Arms as follows:

Our sovereign lady the queen doth strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

Then another Proclamation was made: Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy bail, else thou forfeitest thy recognizance.

The Doctor appearing at the bar accordingly, with his counsel, as before:

Lord Chancellor. Gentlemen, you that are counsel for the prisoner, may proceed to his Defence.

Sir *Simon Harcourt.* May it please your lordships, I am counsel for Dr. Sacheverell, who stands impeached in the name of all the Commons of Great Britain of High Crimes and Misdemeanors. The crimes supposed to have been committed by him are contained in four Articles. I beg leave to postpone the three last, without mentioning any thing of them, until we have all concluded what we have to offer and lay before your lordships, as to the several charges contained in the first; and endeavoured to satisfy your lordships, that notwithstanding what has been objected by the gentlemen of the House of Commons against the Doctor, in maintenance of that Article, he is an innocent man. The first Article contains three distinct charges; we shall proceed on them as they lie in order. The first of them is, "That he suggests and maintains, that the necessary means used to bring about the late happy Revolution were odious and unjustifiable." Your lordships have been informed, that by this expression of, 'The necessary means,' mentioned in the first Article, the gentlemen of the House of Commons intend his late majesty's glorious enterprize for delivering this kingdom from Popery and arbitrary power, and the subjects of this realm well affected to their country, joining with, and assisting him in that enterprize. In a shorter description, it has been explained that these necessary means were the subjects' Resistance to their unfortunate prince then upon the throne. Of this Resistance the Doctor has made no mention in his Sermon. He has, indeed, affirmed the utter illegality of Resistance on any pretence whatsoever to the supreme power; but it cannot be pretended, there was any such Resistance used at the Revolution. The supreme power in this kingdom is the legislative power; and the Revolution took effect by the Lords and Commons concurring and assisting in it. Whatever therefore the Doctor has asserted of the utter illegality of Resistance, his assertion being applied to the supreme power, cannot relate to any Resistance used at the Revolution; and consequently cannot be an affirmance, that such Resistance, or such necessary means, were odious and unjustifiable. One of the learned gentlemen, who spoke the third day of this trial, in maintenance of the last Article, concurred with me in this; and objected it to the Doctor, that he had guarded himself, by confining his assertion to the supreme power; and that he had not averred the utter illegality of Resistance to the queen: But had he in express terms affirmed the unlawfulness of such Resistance, yet by the same arguments which have been used, the Doctor would have been told, he had been preaching a slavish doctrine. My lords, another gentleman of the House of Commons (I think there were but two of them who took notice of this expression of the Doctor's of the supreme power) observed, that the

Doctor had asserted the illegality of Resistance to the supreme power on any pretence whatsoever; which power he admitted was the legislative; and declared, if the Doctor had really meant that power, he should not have differed from him; and without doubt, your lordships and all persons will concur with him in this, that it is utterly unlawful to resist the supreme power. But that gentleman being satisfied, that though the Doctor expressly mentioned the supreme power, which is the legislative, yet he certainly intended the supreme executive power, concluded he was guilty of this charge in the first Article; and mentioned it as an instance of the great mercy and lenity of the House of Commons, that they had not proceeded against him for high-treason, as a parson in one of the late reigns was prosecuted for words which he thought less offensive and dangerous than this assertion preached by Dr. Sacheverell. And yet that gentleman was pleased to say, that had a Dissenter, whose affection to the government was unsuspected, expressed himself as the Doctor did, the gentlemen of the House of Commons would not have thought fit to have prosecuted him. That case which was alluded to, I take to be the case of Mr. Roswell, a Nonconformist minister.* He was indicted in the 36 Car. 2, for words spoke by him in a Sermon preached at a meeting-house. It was a prosecution carried on through the violence of those times, and generally detested. He was convicted: but on cooler thoughts, and consideration of the uncertainty in his expressions, that they could not amount to such a crime as he stood charged with, judgment was arrested, and Mr. Roswell was discharged. Another learned gentleman who opened the Charge, was of opinion, that the Doctor, in his assertion of the illegality of Resistance to the supreme power, does really neither mean the legislative nor executive power, but that he had the Pretender in his view. This is diving into the secrets of his heart, and searching into his thoughts, which God only knows. This was urged, to avoid the strange inconsistency, in concluding, that the Doctor was endeavouring to undermine the government, by preaching up the utter illegality of resisting it.

My lords, if there be a double sense, in either of which those words are equally capable of being understood; if in one sense the Doctor's assertion be undeniably clear, but in the other some doubt might arise, whether his words be criminal or not, the law of England is more merciful than to make any man a criminal, by construing his words against the natural import of them, in the worst sense. This is the great justice and clemency of our law, in every man's case. But some persons are intitled to have a more favourable construction put on all their words and actions, than others are; such as persons acting in the execution of their offices, in obedience to authority, or by a commission from the crown; such persons are looked upon as under the immediate protection and care of the law: how much more reasonable is it, that ministers of the Gospel, who have their commission from God, and speak in the name of God, should have the most candid interpretation made of whatever they say? This, I am persuaded, was one of the chiefest reasons which in the case of Mr. Roswell allayed the rage of that reign; and at that time obtained mercy for him, though a Nonconformist minister under a conviction of high-treason. It is a hard fate attends this unhappy gentleman, if he must inevitably lie under the imputation of being thought an enemy to the Revolution, and to our present happy establishment on that foundation. What evidence will your lordships expect he should produce to clear himself? He has shewn his submission to the Revolution, from the first moment his years made him capable of doing so. He has given all the public testimonies of his fidelity and affection to the last reign, as well as the present, which the government has at any time required from the most suspected persons. He has taken the Oath of Allegiance, signed the Association, and took the Abjuration. It is a miserable case any man is in, if after he has taken the Abjuration, the utmost which is required, he shall still be told, he hath indeed abjured the Pretender, but hath not yet forgot him. If neither the inoffensiveness of the Doctor's behaviour, neither his words nor oaths can satisfy; if after all these demonstrations the Doctor has given of his fidelity he is still liable to be censured, what satisfaction is it possible for him to give?

My lords, if the manner of this solemn prosecution has not altered the nature of things, I hope I may insist, without putting in a claim of right in behalf of all the factious and seditious people in the kingdom to revile the government at pleasure, that by the happy constitution under which we live, a subject of England is not to be made criminal by a laboured construction of doubtful words; or when that cannot serve, by departing from his words, and resorting to his meaning. Too many instances there were of this nature before the late happy Revolution; but that put an end to such arbitrary constructions.

I might trouble your lordships on this head with multitudes of authorities; but I shall mention only one: it is an authority of your lordships, upon a Writ of Error, immediately after the Revolution; sir Samuel Barnardiston's case; and I beg leave to refer to your lordships' Journal, May 14, 1689. It was that gentleman's misfortune to be called in question in the reign of king Charles the 2d (Hill. Term, 1683,) for writing some letters, supposed to be seditious, and highly reflecting on the government, and the public justice of the nation at that time. Upon his trial he was represented as a seditious man, and one of a turbulent spirit; and being so painted by the chief justice who tried him, though his actions

* See his Case, vol. 10, p. 147.

were inoffensive; notwithstanding his innocence, a verdict was obtained against him; and when he came to receive judgment, not being looked upon as an inconsiderable man, nor as a tool of his party, but as one of the heads of it, a fine of 10,000*l.* was set on him:* I beg leave to lay before your lordships what you did in that case. Your lordships reversed that judgment; and as a glorious instance of your justice, not contenting yourselves with the right you had done in the case then before you, at the same time provided, as far as was possible, that no innocent person, in after-ages, might suffer wrong. Your lordships, therefore, in an extraordinary manner, ordered the reasons of your judgment to be entered in your Journal, and they are entered in the following words: "First, the information in this case being grounded upon letters, which in themselves were not criminal, but made so by innuendoes, your lordships declared, that innuendoes, or supposed or forced constructions, ought not to be allowed; for all accusations should be plain, and the crimes ascertained." My lords, I hope it is unnecessary to my present purpose, to read to you the second reason; but as it was another instance of your lordships' justice, which ought never to be forgot, I shall take the liberty of doing it: it relates to the fine of 10,000*l.* Though sir Samuel Barnardiston was a gentleman of a very considerable estate, your lordships declared, "Secondly, That this fine of 10,000*l.* is exorbitant and excessive, and not warranted by legal precedent in former ages; for all fines ought to be with a *salvo cum tenemento suo*, and not to the party's ruin." These were your lordships' declarations in that case. If there be any uncertainty or doubt in the Doctor's expressions, your lordships, I hope, will put the most favourable construction on them. What I have hitherto offered is, with relation to these words, the supreme power; but that which I take to be the main objection in this case is, that the Doctor's assertion of the illegality of Resistance must be necessarily understood with reference to the executive power. And if it be utterly illegal in any case, upon any pretence whatsoever, then it was unlawful at the Revolution; and from thence the consequence is drawn, that the Doctor is guilty of this first charge, of maintaining, "That the necessary means used to bring about the happy Revolution were odious and unjustifiable." This I take to be the force of the objection.

My lords, I admit the Doctor has in general terms asserted this proposition of the illegality of Resistance to the supreme power on any pretence whatsoever; and yet I am not altogether without hopes, but that I shall be able to satisfy even the gentlemen of the House of Commons, whether that expression be understood of the legislative, or executive power, that he is an innocent man notwithstanding that assertion.

My lords, there is nothing farther from our hearts, nor is any thing less necessary to the Doctor's defence, than for us to dispute or to call in question the justice of the Revolution. We are so far from it, that we look on ourselves to be arguing for it, whilst we are endeavouring to show your lordships, that the Resistance used at the Revolution is not inconsistent with the doctrine of the Church of England, and with the law of England; and that the Doctor uses no other language than what they both speak. When your lordships have laid aside what was urged the second day, to show the justice of the Revolution, and to aggravate the Doctor's offence, supposing him guilty, this matter will lie in a very narrow compass; and I am in hopes there will not appear to be so great a difference as hath been represented, between the Doctor, in his assertion concerning the illegality of Resistance, and some of the gentlemen of the House of Commons. I cannot say that I differ from many of them in their notions of allegiance, as stated the second day of this Trial.

My lords, the first thing on which I humbly insist, supposing this general assertion to relate to the supreme executive power, is, that the Doctor has not, in any part of his Sermon, applied it to the particular case of the Revolution.

It was insisted on the first day, That he had not only asserted the utter illegality of resistance to the supreme power, on any pretence whatsoever; but also that he had expressly affirmed, that the Revolution was not such a case, as ought to be excepted out of his general rule. This I deny: if such an expression can be found in the Doctor's Sermon, I shall think no punishment too great for him. It is one thing, expressly to affirm the Revolution is such a case, as ought not to be excepted out of the general rule; and another thing, not to make the exception. The Apostle, who in general terms enjoins the duties of Obedience and Non-Resistance to the higher powers, makes no exception when he lays down those precepts; nor (on the other side) does he say, no such case can ever happen, wherein obedience is not to be paid, or resistance not to be made. He is silent in that matter, and the Doctor's expression, in this case, is agreeable with that of the Apostle. To prove the Doctor guilty of this first charge, and that he had directly applied his general rule of the illegality of resistance to the supreme power to the particular case of the Revolution, a learned gentleman, (whose province it was to maintain the first Article) on the second day of this trial, first stated to your lordships the page wherein the Doctor mentions the utter illegality of Resistance, and read that passage in the following words: "The grand security of our government, and the very pillar upon which it stands, is founded upon the steady belief of the subjects obligation to an absolute and unconditional obedience to the supreme power in all things lawful, and the utter illegality of Resistance

* See his Case, vol. 9, p. 1334.

upon any pretence whatsoever." And then, says he, the Doctor goes on, and says, "Our adversaries think they effectually stop our mouths, and have us sure and unanswerable on this point, when they urge the Revolution of this day in their defence." This might very reasonably make an impression upon your lordships, not comparing those several passages in the Doctor's Sermon, at the same time that objection was made. But I beg your lordships will observe the distance of these two passages from each other, between twenty and thirty lines, in which several distinct and entire sentences are contained, to which that last passage of, "Our adversaries," &c. plainly relates. The next method used to prove the Doctor guilty, was, by taking the passage in itself, independently from any other; and this I own to be the true way of considering it: and taking it thus, it is objected, if in no case whatsoever it is lawful to resist, it was then unlawful at the Revolution. Such a doctrine must be a slavish doctrine. An unlimited Passive Obedience and Non Resistance is a slavish notion.

My lords, Dr Sacheverell does not contend for it; nor is there any thing mentioned in his Sermon, of such an Obedience or Non Resistance. There is but this small difference between the gentlemen of the House of Commons who think this expression so highly criminal, and the Doctor, who still conceives it to be otherwise; whether, when the general rule of obedience is taught, the particular exceptions which may be made out of that rule, are always to be expressed? or whether, when the general rule is laid down, the particular exceptions, which might be made out of that rule, are not more properly to be understood or implied?

I humbly apprehend, my lords, that extraordinary cases, cases of necessity, are always implied, though not expressed, in the general rule. Such a case undoubtedly the Revolution was, when our late unhappy sovereign then upon the throne, misled by evil counsellors, endeavoured to subvert and extirpate the Protestant religion, and the laws and liberties of the kingdom. The general rule ought always to be pressed; but the exceptions of extraordinary cases, or cases of necessity, are never particularly to be stated. To point out every such case before-hand, is as impossible, as it is for a man in his senses not to perceive plainly when such a case happens.

Every minister of the Gospel is sufficiently instructed from the doctrine of his Church, from the written laws of the land, and the law of God, to press the general duty of obedience; but such extraordinary cases, wherein Resistance is lawful, wherein it becomes an indispensable duty, are no where laid down. The same apostle, who enjoins Obedience and Non Resistance to the higher powers, commands also servants to obey their masters, and children their parents, in all things: notwithstanding which general precepts, many cases may happen, wherein it may be not only unfit, but sinful for servants to obey their masters, or children their parents. And yet the apostle never thought it proper to state, or mention those cases, but contented himself to press the duty of subjection in general, leaving such cases (when they happened) to justify themselves.

Such cases, my lords, with respect to Resistance against the supreme power, are noway fit to be considered, but in parliament; and even the parliament itself hath never yet thought fit otherways to consider them than by way of retrospect, to justify what had of necessity been done in those cases; but never went so far as to enumerate the cases of that kind, which might happen for the future, wherein it might be lawful for the subject to resist; nothing being more evident, than that the subjects would be, some time or other, thereby tempted to exceed their just liberty.

I beg leave to close what I have humbly offered to your lordships on this head with an observation I borrow from Mr. Pym, at his delivering the charge against Dr. Manwaring *. Mr. Pym, speaking of the duchy of Normandy, observes, That that duchy having been oppressed with some grievances, contrary to their franchises, made their complaint to Lewis the tenth; who by his charter, acknowledging the right and custom of the country, and that they had been unjustly grieved, did grant and provide, That from thenceforward they should be free from all subsidies and exactions to be imposed by him and his successors, yet with this clause, 'unless when great necessity required:' Which small exception, Mr. Pym observed, had devoured all their immunities granted by that charter. I think I may as reasonably conclude, That if clergymen or others, in their sermons, writings, or public discourses, instead of preaching up the general rule of obedience, are permitted to state the several extraordinary cases which may arise, the several excepted cases which, notwithstanding the general rule, are implied; such exceptions will in time devour all allegiance.

Having thus stated to your lordships the question between us, Whether such excepted cases as the Revolution was, are not more proper to be left as implied, than to be expressed, when the general duty of obedience is taught? I shall endeavour to satisfy your lordships, first, that the Doctor's assertion of the illegality of Resistance to the supreme power on any pretence whatsoever, in general terms, without expressing any exception, or that any exception is to be made, is warranted by the authority of the Church of England: And Secondly, That his manner of expression is agreeable to the law of England.

First, That it is warranted by the authority of the Church. Your lordships were informed, on the first day of this trial, with how much bravery even our Popish ancestors asserted the

* His Case is in this Collection, vol. 3, p. 336; and see an Anecdote relating to him, vol. 8, p. 122.

legality and indispensible duty of Resistance, whenever they thought the liberty of their country required it; but that at the Reformation, when truth began to shine out, then it became evident, that this notion of the illegality of Resistance was a slavish doctrine. The learned gentleman undoubtedly pitched on a very proper time to begin his search after truth; and from thence I shall endeavour to trace it.

One very early authority I find; it was indeed in the dawn of the Reformation, in a book intitled, A Necessary Doctrine and Erudition for any Christian man; published by the king's command, 34 H. 8. It was a treatise composed by the direction of Cranmer, by Ridley, Redmayn, and other very great and learned men. I find it highly commended in the History of the Reformation, part 1, book 3, page 286. The reverend author of that history gives an account how well the Reformers were employed, (Ann. 1540,) though not in the way of convocation: That a select number of them sat by virtue of a commission from the king, confirmed in parliament; and that their first work was to draw up a declaration of the Christian doctrine, for the necessary erudition of a Christian man; and (pag. 293,) that it was finished and set forth, with a preface written by those of the clergy who had been employed in it, declaring with what care they had examined the scriptures, and the antient doctors, out of whom they had faithfully gathered that exposition of the Christian faith. In this treatise I find these passages. In the exposition of the fifth commandment: "And by this commandment also, subjects be bound not to withdraw their fealty, truth, love, and obedience towards their prince, for any cause whatsoever it be: nor for any cause they may conspire against his person, nor do any thing towards the hindrance or hurt thereof, nor of his estate." In the exposition of the sixth commandment: "Moreover, no subjects may draw their swords against their prince, for any cause whatsoever it be." The reverend father of our Church, to whom the public is so much indebted for that excellent History of the Reformation, and who has received the just thanks of both Houses of Parliament for it, (page 291,) declares those expositions of the commandments to be very profitable.

My lords, though the treatise, in which I find these expositions, was published in a Popish reign, yet (as an undeniable evidence that the doctrine of Non-Resistance there taught, is a Protestant doctrine) I shall shew your lordships, the reverend author of the History of the Reformation has himself asserted it, in much stronger terms than Doctor Sacheverell has done. In Edward the sixth's time, the glorious light of the Gospel shone out. The first book of the Homilies, prepared by the clergy, was then published by the royal authority; in which were three parts of a homily, or rather three distinct homilies of obedience: In one of which is the passage mentioned in the Doctor's Answer. "Here, good people, mark diligently: It is not lawful for inferiors, and subjects, in any case, to resist and stand against the superior powers; for St. Paul's words be plain, that whosoever withstandeth, shall get to themselves damnation; for whosoever withstandeth, withstandeth the ordinance of God." In queen Mary's reign, the light of the Gospel was eclipsed, and the darkness of Popery again overspread the nation. Resistance to princes being a doctrine of the Church of Rome*, your lordships will not expect any authentic evidence to be produced out of that reign, in maintenance of the doctrine of Non-Resistance.

When queen Elizabeth came to the crown, the truth of the Gospel shone forth in its full lustre, and then six homilies were added to the other three against disobedience and wilful rebellion; in which your lordships will find many passages, wherein the duty of Non-Resistance is pressed and inculcated, in much stronger terms than it hath been asserted by Dr Sacheverell. In that glorious reign, the thirty nine articles of our religion were agreed upon by the archbishops and bishops of both provinces, and the clergy in convocation; by the 35th of which, the homilies are declared to contain a godly and wholesome doctrine, and are ordered to be read in churches, by the ministers, diligently and distinctly, that they may be understood of the people. In the thirteenth year of that reign, a further sanction was given to the homilies; the thirty nine articles were then confirmed, and every person in holy orders, to be admitted to any benefice with cure, was required (by act of parliament made in that year) to subscribe and read them in the church, and declare his unfeigned assent thereto.

My lords, we have now a most gracious sovereign on the throne, as far surpassing her renowned predecessor queen Elizabeth, in the effectual support she gives to the Protestant interest, and in her pious care for the perpetual security of the Church of England, as in all the other successes and glories of her reign.

In this reign, a perpetual sanction is given to the books of the Homilies, by inserting in the Act of Union the act made 13 Eliz. which confirms the thirty-nine articles; by the 35th of which, the doctrine of the Church (taught in the Homilies) is approved; and declaring that act, 13 Eliz. to be an essential and fundamental part of the Act of Union: So that I may now conclude, the doctrine of the Church of England, taught in her homilies, must continue as long as the union of the two kingdoms, which I heartily pray may be to the world's end.

* "Whenever the tide of public opinion has run in favour of absolute monarchy, it has been usual among Protestants to represent the Roman Catholic religion as unfavourable to the power of princes. On the other hand, when the love of liberty is prevalent among Protestants, Popery and Slavery are represented as twin sisters. In our opinion both representations are extravagant." Edinburgh Review, Vol. 19, No. 38, p. 452.

On these authorities do the homilies of our Church subsist: and as they are thus ratified by the articles and acts of parliament, the Doctor has the concurrent authority of the Church and State, for what he has said concerning the illegality of Resistance.

My lords, is this doctrine of Non-Resistance taught in the Homilies in general terms, in the same manner as doctor Sacheverell has asserted it, without expressing any exception? Do the articles of our religion declare the doctrine taught in the homilies to be a godly and wholesome doctrine? and will your lordships permit this gentleman to suffer for preaching it? Is it criminal in any man to preach that doctrine, which it is his duty to read? The Doctor is not only required by the 35th Article to read this doctrine diligently, and distinctly, that it may be understood by the people; but to shew your lordships, the doctrine taught in the homilies did not die, nor was altered at the Revolution, I must observe to your lordships, that the rubric of the office appointed for the fifth of November, by the late queen of blessed memory, directs the clergy on that day if there be no sermon, to read one of these homilies against rebellion. Since the Doctor chose rather to preach, than to read a homily on that day, how could he better comply with the command of her late majesty, than by preaching the same doctrine as was contained in those homilies he was commanded to read on that day, if he did not preach? Does an act of parliament inserted in the Act of Union, injoin him to subscribe to this doctrine before the ordinary, and declare his unfeigned assent to it in his parish church? and shall he be condemned in parliament, for asserting the truth of it? I must admit, this 35th Article of our religion is not by the Toleration-act (I will give no offence, by calling it by its true name) required to be subscribed by any persons dissenting from the Church of England, to entitle them to their exemption from the penalties mentioned in that act. But that act of parliament no way varies the case with respect to the clergy; so that whatever duty was incumbent on them before, is so still: and therefore I hope, your lordships will not think this gentleman has so highly offended.

As a further proof that this doctrine of Non-Resistance, as laid down by the Doctor in general terms, without making any exception, is the doctrine of the Church of England, I shall shew your lordships, that it has been so preached, maintained and avowed, and in much stronger terms than the Doctor has expressed himself, by our most orthodox and able divines from the time of the Reformation. It would be endless to offer your lordships all the authorities I might produce on this occasion; but we shall beg your lordships' patience to lay before you some passages out of the learned writings of several reverend fathers of our Church, of nine archbishops, above twenty bishops, and of several other very eminent and learned men.

That your lordships may not think this doctrine died at the Revolution, I shall humbly lay before your lordships the opinions of three archbishops, and eleven bishops, made since the Revolution, which will fully shew the doctrine of Non-Resistance is still the doctrine of our Church; I would not willingly give offence in naming them; I am sure I mean no reflection, nor can it, as I think, be any reproach to them; I find no other doctrine in this case taught by them, as far as I am able to judge, than what the Apostles taught before them. With your lordships' leave, I will therefore presume to name them: archbishop Tillotson, the two present archbishops (*a*), bishop Stillingfleet, late bishop of Worcester, the present bishops of Rochester (*b*), Salisbury (*c*), Worcester (*d*), Ely (*e*), Bath and Wells (*f*), Lincoln (*g*), Exeter (*h*), St. Asaph (*i*), Carlisle (*k*), and Chichester (*l*). If I am able to shew your lordships that all these right reverend fathers of our Church have preached the same doctrine the Doctor has,* are the same words coming out of their mouths to be received as oracles of truth, but spoke by the Doctor, fit for articles of impeachment? I am sure it is impossible to enter into the heart of man to conceive, that what these reverend prelates have asserted, that any general position they have laid down concerning Non-Resistance, is an affirmance that necessary means used to bring about the Revolution were odious and unjustifiable: why then is Doctor Sacheverell, by having taught the same doctrine, in the same manner as they did, to be charged for having suggested or maintained any such thing?

My lords, I dare not suppose this doctrine, thus established by so many reverend fathers of our Church, to be erroneous. If an intemperate expression of one single archbishop above a hundred years since dead, is fit to be inserted in an Article of Impeachment of High Crimes and Misdemeanors, what punishment should I deserve, could I suppose the doctrine, taught by so many archbishops and bishops, to

(*a*) Tennison and Sharpe. See the Case of bishop Compton, vol. 11, p. 1123.

(*b*) Sprat; See his Case, vol. 12, p. 1051.

(*c*) Burnet; See his Case, vol. 11, p. 1103.

(*d*) Lloyd, one of the Seven. See their Case, vol. 12, p. 183. See also Proceedings against Lloyd, vol. 14, p. 545.

(*e*) Moore. (*f*) Hooper. (*g*) Wake.

(*h*) Blackhall, an antagonist of Hoadley, ridiculed in Powell's letter, Tatler, No. 50.

(*i*) Fleetwood. (*k*) Nicholson.

(*l*) Manningham.

* In the Case of Daniel Holt, Nov. 23, 1793, it was decided that a defendant charged with having published a libel shall not be permitted to prove, that a paper similar to that for the publication of which he is prosecuted was published on a former occasion, by other persons who have never been prosecuted for it, 5 Term Rep. 436.

be erroneous? But if I might hope to be excused, if I made the supposition, that the homilies of our Church contain false doctrine, and that so many of the right reverend fathers of our Church are capable of erring, or being ignorant in the doctrine of their Church, I humbly propose it to your lordships, whether a clergyman who errs after such great examples, might not reasonably have hoped for a more moderate correction, than an impeachment! Had this slavish doctrine of Non Resistance been first branded with its indelible mark of infamy, and the right and indispensible duty of Resistance to princes plainly shewn; had all the slavish notions of the common law which we find dispersed throughout our law-books, which give countenance to this doctrine of Non-Resistance, been first weeded out of them, and some few acts of parliament, entirely agreeable with this slavish doctrine, been first repealed; had the people been set right in the notions of their obedience, and the ministers of the Gospel been instructed by act of parliament what doctrine they ought to preach, and what not; had all these things been first done, and the Doctor had afterwards erred, your lordships might have then looked upon him as an obstinate offender.

The next thing I beg leave to consider is, the law of England; whether the Doctor's assertion of the utter illegality of Resistance to the supreme power on any pretence whatsoever, in general terms, is agreeable to the law of England. I hope I need not again explain myself as to this particular; I mean, that as the general rule is always taught and inculcated by the Church, so has it always been declared by the legislature, without making any particular exception; and if this rule holds both in Church and State, this gentleman is strangely unfortunate, if he cannot be comprehended under one or other of them.

My lords, whatever may at any time heretofore have been thought proper to be done by parliament; whatever measures, in cases of the last necessity, may at any time have been taken by the people in general, for preserving their liberty, or asserting the rights of their country, and keeping themselves from slavery; yet in no age can any instance be shewed, not in the reigns of those princes who have been deposed, that this doctrine, of the right of Resistance, as it has been termed, was ever permitted to be asserted by any particular person. A memorable case to this purpose happened in the reign of king Edward the second: an act of parliament passed in the 15th year of that reign, intitled, 'Exilium Hugonis de Spencer Patris et Filii.' The two Spencers were banished by that act; and the first article in that act against them is, "That they had affirmed and published in writing, that homage and oath of allegiance were due more by reason of the crown, than by reason of the person of the king; and that if the king did not demean himself according to reason, in the exercise of his government, his subjects might remove him: and that since that removal could not be by course of law, they might therefore remove him by force." The time when this act passed, and what afterwards happened, is remarkable. The act, very soon after the making it, was repealed, and it was thought necessary in that reign the people should assert that right; and thereupon the king was deposed. But your lordships will find in his successor's reign, they were so far from casting any blot on the Act of Exile, that in the 1 Edw. 3, by one of their first acts, the repeal of the Exile was annulled, and the Act of Exile confirmed. It is true, that in the 21st year of Rich. 2, the act made the 1st Edw. 3, for annulling the repeal of the Exile, was repealed, and the reversal of the Act of Exile confirmed; but in the 1st of Henry 4, the whole parliament held the 21st Rich. 2, and all the proceedings in it, for their extravagance, were annulled, and from thence the Act of Exile of the two Spencers continued untouched. I must humbly observe to your lordships, that though there were two repeals of the Act of Exile, yet neither of them mentioned the matter contained in the articles as insufficient; but the reasons assigned in the Acts of Reversal are, that "in the proceedings against the Spencers, the Great Charter was not observed, that the prelates were not present, and did not assent thereto;" and some other defects in form. What opinion our greatest lawyers have since had of this Act of Exile, sufficiently appears, Co. 7, 11, Calvin's case, the words are these: "In the reign of Edw. 2, the Spencers, the father and the son, to cover the treason hatched in their hearts, invented this damnable and damned opinion, that homage and oath of allegiance was more by reason of the king's crown (that is, of his politic capacity) than by reason of the person of the king; upon which opinion, says the lord chief justice Coke, they inferred most execrable and detestable consequences. First, If the king do not demean himself by reason in the right of his crown, his lieges are bound by oath to remove the king. Secondly, Seeing that the king could not be reformed by suit of law, that ought to be done by force: all which were condemned by two parliaments, one in the reign of Edw. 2, called Exilium Hugonis de Spencer; and the other, 1 Edw. 3, cap. 1." I barely mention these acts to shew, that however applicable the case of the Revolution might be to that of king Edw. 2, yet that those very persons, by whom the king was deposed, thought it so high a crime in the two Spencers, to take on them to publish such positions, as to deserve banishment. The next law I beg leave to mention, is the 25th Edw. 3, cap. 2. By which the levying war against the king in his realm is declared, in general terms, to be high treason, without an exception whatsoever: this is an instance of what I am contending for, that the law, in all cases concerning our allegiance, lays down the general rule, without making any exception. So the oath of Obedience (as enjoined 3 Ja. 1, 4,) all persons are

to swear to defend the king to the utmost of their power, against all conspiracies and attempts whatsoever, which shall or may be made against his person, crown or dignity. The oath is in general, without any exception expressed in it; and no man will presume to say, that oath, which was taken from the 3 Ja. 1, till after the Revolution, was not true. But the answer to be given is, what I give in this case, that cases of necessity, such as the Revolution, were implied, they are improper to be expressed; and why ought not the like implication equally to be allowed in the general assertion made by Dr. Sacheverell? By the act made 1st Car. 2, cap. 30, for attainder of the regicides, it is declared, "That by the undoubted and fundamental laws of this kingdom, neither the peers of this realm, nor the Commons, nor both together, in parliament, or out of parliament, nor the people, collectively, or representatively, nor any other persons whatsoever, ever had, have, hath, or ought to have, any coercive power over the kings of this realm."

My lords, I cannot apprehend this act to be repealed: If it be not, I beseech your lordships, let Dr. Sacheverell be tried by it; and that you will be pleased to consider whether the Doctor's assertion, concerning Resistance, hath outgone the declaration in this law.

Your lordships hear how fully the fundamental law of the kingdom is declared by this act: The Doctor has only said, "It is illegal to resist the supreme power on any pretence whatsoever." The expression at the end of that declaration may possibly be observed, that it extends only to a coercive power over the person of the king; I know not what inference may be drawn from thence, but certainly there is nothing in the Doctor's Sermon but what may be abundantly justified by the declaration in that act.

The Militia Act, the 13th and 14 Car. 2, c. 3, for ordering the forces in the several counties of this kingdom, contains a declaration as strong as the former: By that act it is declared, "That neither both or either of the Houses of Parliament can, or lawfully may, raise or levy any war, offensive or defensive, against his majesty, his heirs, or lawful successors." When I perused this last declaration in the recital of the acts, I read carefully to the end of it, to look for the exception, but could find none. If there be no exception in that act, but that it stands as a general declaration of the law; if neither, nor both the Houses of Parliament can or may raise or levy war, offensive or defensive, against the king, is it a High Crime and Misdemeanor to assert in general terms that Resistance to our prince is unlawful? Pray, my lords, compare the Doctor's assertion in his Sermon with the declaration in this last act of parliament.

By the Corporation Act, 13 Car. 2, sess. 2, cap. 1, all mayors, aldermen, common-council men, and other corporate officers there enumerated, are required to take an oath, "That it is not lawful upon any pretence whatsoever to take arms against the king." By the Militia Act, which I have already mentioned, the same oath, "That it is not lawful, on any pretence whatsoever, to take arms against the king," is required to be taken by every peer of the realm, before he is capable of acting as a lieutenant, or deputy-lieutenant; and by every commoner of England, before he can be capable of acting as a lieutenant, deputy-lieutenant, officer or soldier in the militia. By the Act of Uniformity, 13 and 14 Car. 2, cap. 4, all ecclesiastical persons, and many others under the several denominations in that act are required to subscribe to the truth of that assertion, "That it is not lawful on any pretence whatsoever, to take arms against the king." This is the language of our law, and the like do the Apostles use in their precepts touching Obedience and Non-Resistance to the supreme power.

But here I ought to observe, an objection has been made to these several acts, that by an act made in the second year of the late king and queen, it is enacted, "That from thenceforth the oath injoined to be taken or subscribed, by the several acts I have mentioned, should not be required to be taken by any person whatsoever; and that the former acts of parliament, as to that oath, are thereby repealed." It is a very tender repeal, my lords, if it be one; but admit it to be one, it seems to have been argued from thence by a learned gentleman, with whom in many things he said, I no way differ, that this doctrine of Non-Resistance was become the more unlawful, because that oath was not to be taken from thenceforward.

My lords, as the Corporation Act required the swearing it was not lawful to take up arms against the king, so does it direct the subscribing to the unlawfulness of the Solemn League and Covenant; now by the same argument, the Solemn League and Covenant may be proved to have been a lawful oath.

I beseech your lordships to consider, whether the repeal of this oath can have any weight with your lordships. It was a general assertion, to which all the peers and commoners, in the employments I have mentioned, were to swear; there is no exception in the oath, but what is implied in it. Was not the proposition as true before it was sworn, as after? Was it therefore true because it was sworn; or was it sworn because it was true? Did the swearing it make it true; or the truth make it fit to be sworn? If it was true when it was sworn, the proposition was equally true before, and since. I believe, since the oath was taken by so many peers and commoners, no man will pretend to question the truth of the proposition.

My lords, I have gone through the several laws I shall lay before your lordships on this occasion; and let me once more humbly beg your lordships, that you will be pleased to compare the Doctor's assertion in his Sermon, concerning the illegality of Resistance, with them; whether it be stronger than the declaration of the undoubted and fundamental law of the kingdom, in the act against the regicides; than

the declaration in the Militia Act; than the oath required to be taken by so many acts of parliament; than the declaration in the 25th of Edw. 3. All the Doctor has said, is, that Resistance to the supreme power is illegal, on any pretence whatsoever. All the peers and commoners of England, under the characters and employments I have mentioned, have sworn to the truth of it; the 25th of Edw. 3, declares it to be high-treason; and your lordships have heard what St. Paul says.

My lords, I began this discourse, relating to the doctrine of the Church and the laws of the land, with the most sincere protestation, that it was far from my intention to offer any thing inconsistent with the justice of the Revolution: I think the justice of it consistent with our laws, the exceptions to be made being always implied. And surely none can shew themselves truer friends to the Revolution, than those who prove that the Revolution may stand without impeaching the doctrines of our Church, or any fundamental law of the kingdom. Dr. Sacheverell being impeached for not making the exception, when he laid down the general rule; I beg leave to turn the case, and suppose he had made it. Had he been stating the case of a Revolution, on a day when he pressed the illegality of Resistance, on a day when, if he did not preach, he was obliged to read one of the homilies against rebellion, in which there is no exception: had he been picking holes for the subject to creep out of his allegiance, and had he been cited before his diocesan; might he not have been questioned, by what authority he presumed to preach in that manner? Whether he found such doctrine taught by the Apostles, by the Homilies, or by any of the Reverend Fathers of our Church? Might he not have been told, it was his duty, in imitation of those great examples, to press the general duty of obedience, and the illegality of Resistance, without making any exception whatsoever? Had he been questioned before the temporal power, for preaching in the manner he has done; had an indictment been framed against him on his general assertion, and brought before the twelve judges; I humbly apprehend, not one of them would have declared he went too far. But had he been making exceptions out of the general rule of obedience, especially if he had been tried by such judges as were before the Revolution; might he not have been told, It was easy to discern what spirit he was of, of what party he was, and what he aimed at, what he intended: that he had not been preaching in defence of the late Revolution, to shew the justice of it; but that he was covering the treason of his heart, and under pretence of justifying one Revolution, he was labouring to bring about another. He, who knew how far the design had gone of landing the Pretender but two years since; what else could he mean, by picking holes in the rules for our obedience?

I have but a word or two to add to the other charges of this Article. The gentlemen of the House of Commons were pleased to observe, that though there were four Articles, the substance of them all centered in the first. The second charge in this Article is, That his late majesty, in his Declaration, disclaimed the least imputation of Resistance. It is not, I hope, a sufficient ground for an Article of Impeachment, if the Doctor has expressed himself in an obscure manner. I must confess, I cannot easily comprehend him myself; but it may be any man's misfortune to express himself in such a manner, as to make it decent and fit for him to explain himself: and I hope the Doctor has explained himself, so as to shew, that though he may have spoken improperly, he has yet spoken innocently. The gentlemen of the House of Commons declare, by Resistance they mean the Resistance of the subjects to their sovereign: but Resistance, where the Doctor mentions his late majesty to have disclaimed it, cannot have that meaning. He was a sovereign prince, and might resist whom he pleased. Perhaps the passage in the Doctor's Sermon may be capable of different constructions; but the Doctor has taken care to prevent all manner of mistakes that might possibly arise from thence: he has not only (as was observed by one of the gentlemen of the House of Commons) made a marginal reference, to shew what he meant, which might have been done when he apprehended that expression would be found fault with; but he has in the Sermon itself quoted what the parliament did, in burning a treatise which related to the king's having conquered the kingdom.

My lords, it was asked, What had he to do to take notice of that matter? What led him to justify the late king? Was there ever any body living that imputed any such thing as conquest to him? My lords, If there never was but that one imputation endeavoured to be cast on his memory, as I never heard of any other, surely then he did well to wipe off that imputation; and that this has been laid to his charge, I must refer to the Journals of both Houses of Parliament. Your lordships resolved the assertion of king William's and queen Mary's being king and queen by conquest, was injurious to their majesties' rightful title to the crown, inconsistent with the principles on which this government is founded, and tending to the subversion of the rights of the people: and on the 25th of January, 1692, your resolution being communicated to the Commons, was unanimously agreed to.

The last part of this Article is, "That to impute Resistance to the Revolution, is to cast black and odious colours on his late majesty and the said Revolution." My lords, there are these words in the Doctor's Sermon, of casting black and odious colours on his late majesty and the Revolution: they are in the close of a sentence, which immediately precedes the expression of his late majesty's disclaiming the least imputation of Resistance. I

is impossible to mistake the place; your lordships will examine it; and from thence let him take his fate, whether that passage is applicable to what went before it, or to what follows after? These words of casting black and odious colours, are so far from referring to his late majesty's disclaiming the imputation of Resistance, that they conclude the sentence which went before it; in which the Doctor mentions "New preachers, and new teachers, that broached abominable positions, that the people have a right to cancel their allegiance at pleasure, to call their sovereign to account; and who pretend to justify the horrid murder of the royal martyr king Charles the first, and endeavour to skreen themselves, and their vile notions, under the Revolution." The Doctor having mentioned these new preachers and their doctrine, goes on: "Our adversaries think they effectually stop our mouths, and have us sure and unanswerable on this point, when they urge the Revolution of this day in their defence. But certainly they are the greatest enemies of that and his late majesty, and the most ungrateful for the deliverance, who endeavour to cast such black and odious colours upon both." I pray, my lords, what does this refer to? Does not it clear the Revolution against the venom of those miscreants, who publish such villainous assertions as these? But it was objected by a learned gentleman, what has a minister to do to meddle with these things? If any man offend against the temporal, or ecclesiastical law, the courts are open; the magistrates are to punish.

My lords, I do not find, if this doctrine holds, that he must preach against any thing: if he must not preach against any thing which may be prosecuted, either in the temporal or ecclesiastical courts, he must not preach against any offence that is forbid by the ten commandments. Perhaps it will be urged, that there are no such people as these new preachers, and new teachers; that he is raising a phantom, and then throwing it down; he is only imagining cases, of which there are no instances; that there are no such men, who endeavour to justify the murder of king Charles, or defend it by the Revolution. We will show there are too many instances of such persons, who make no scruple to publish these positions, and cast reflections on the queen and her government, whom the Doctor has been defending. He is not the person he has been represented; he hath no disloyal thoughts about him: sure I am, he would rather die in her majesty's defence. We shall show your lordships, that there are such as run most vile comparisons between the Revolution and the most execrable murder of king Charles the first, and can find no better difference between them, than this abominable distinction of a 'wet martyrdom' and a 'dry one.'

Mr. *Dodd.* My lords, I am likewise a counsel for Dr. Sacheverell; and I cannot but think, by the same arguments that have been used to maintain these Articles, any book or sermon, be it never so innocent, may be represented to be a libel.

The gentlemen managers of the House of Commons, with submission, have scarce any three of them agreed in any one principal point; only in this most of them have agreed, that the Doctor is a criminal before he is condemned. He has been in the whole debate (generally speaking) so called; the usual expression having been, the criminal at the bar: this (as it is not usual in other places) would have been a great discouragement to us that are his counsel, and great discouragement in his defence, but that we consider that the judgment is your lordships, and that by your justice he must stand or fall. It has been represented, as if this Sermon had been perused and approved by lawyers; but this is only suggested, (as other matters have been), yet there is not the least proof thereof. We have had different facts charged upon us; sometimes we are taxed for having said too much, and sometimes for having said too little, and not mentioning things that were the proper subject of the day.

My lords, we apprehend these matters are objected for want of observing the Sermon itself; for as it was preached on the 5th of November, so your lordships will find an account given for a leaf together, setting forth the horrible design of the Powder Plot. Your lordships will also find, both in the body and conclusion of the Sermon, notice taken of our deliverance on this day.

There have been some acts of parliament cited by the gentlemen managers for the House of Commons; that of the 25th Henry 8, about the supremacy, which we apprehend is not to the present purpose. It only asserts the supremacy, that is, the independency of the crown, which was usurped by the papal authority; for surely king Henry the 8th was a prince that would as little bear the doctrine of Resistance, as any sovereign that ever wore the crown of these kingdoms.

There have been many things said by the gentlemen of the House of Commons that we heartily agree with them in. The Revolution was a case, we all agree, out of the general rule; and so in every thing we say, we hope your lordships will understand it. We neither do nor can understand it; it is against our judgment and interest to think otherwise. We are hearty well-wishers to the Revolution, and to the happiness of England, that is, in a great measure, built upon it. We agree the law of the land is the measure of the prince's authority, and the people's rights; that in the case of the Revolution, when the laws were overturned, Popery was coming in upon us, and property signified nothing: the people of England being invited by his late majesty, did resort to the last remedy, even that of necessity; and that necessity did induce Resistance, and justify them in it; and upon that foot the Revolution succeeded. We totally

deny that the doctrine of Non-Resistance, as laid down by the Doctor, and as asserted by him, was intended for the Pretender, or any other but her majesty and her government; or can be construed a thwarting the Revolution: his assertions are general; those general assertions will have their particular exceptions.

Sure it has not, nor can be made out, that we had an eye in favour of the Pretender in any part of this discourse. Now it has been by some of the gentlemen admitted to us, that the doctrine in the main is right; but, say they, you had your thoughts, your eyes on the Pretender. Now this is so very contrary to what the Doctor has asserted in his whole Sermon, that I hope there is no ground for it: for the Doctor (as a dutiful subject) takes notice that her majesty is the last of the lineal descent, as the relict of the royal family; which quite disowns the Pretender and his right. And can any one imagine, that in such expressions he could have an eye to the Pretender? For if there be any pretence of title in the Pretender, it must be as a descendant of that family. But he takes notice, that her majesty is the only one left of that family in a lineal descent; and I think that is enough to acquit the Doctor of having an eye to him beyond the water.

Having, my lords, made these remarks, I shall now consider the Articles as they lie before your lordships. In the preamble to the Articles, there is notice taken of three acts of parliament: the first is the "Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown." The second is the "Act for preventing Vexatious Suits against such as acted in order to bring in their Majesties, and for their Services." The third is the "Act for paying the States General of the United Provinces their Charges for his Majesty's Expedition into this Kingdom, and for other uses." These are the three only acts that are cited in the preamble of these Articles: I shall say but a word to each of them. As to the Act called, The Bill of Rights, I do not find that that act meddles with the points of Resistance or Non-Resistance; the whole ground and tenor of that act is upon the abdication. It settles the crown upon the vacancy of the throne. It is said, "Whereas the late king James the second having abdicated the government, and the throne being thereby vacant," &c. There is no other fact stated; there is no mention of Resistance. But the throne being vacant, the next head in that act says, that "king James having abdicated the government, and their majesties having accepted the crown, did become lawful king and queen," &c. These are the only passages in that act as to this matter: it has preserved the liberties of the subject; established several rights which are their ancient inheritance; told the people that the throne was vacant; and being so, that their late majesties were lawful and rightful king and queen, as undoubtedly we all agree they were.

My lords, the next act mentioned, is the "Act for preventing Vexatious Suits against such as acted in order to the bringing in their Majesties, or for their Service." This goes further than the Bill of Rights; but whoever reads it, will find, it is but the same act in effect, that was enacted in the reign of Edward 3, after Edward 2 was deposed. It is a mere act of indemnity, an act of pardon for officers civil and military. It only exempts them from prosecution, that having been transgressers against the strict rules of the law, were subject to private actions; and no less could be done than to exempt them from such prosecutions; and therefore that law pardons all actions of trespass that were committed upon that occasion.

My lords, the next act taken notice of is, That for paying the States General. That, I do not see, takes any other notice; but is only for paying the Dutch 600,000*l.* for their assistance to his majesty at his coming into this nation, for our deliverance from Popery and arbitrary power.

Then the preamble charges the Doctor with "Preaching and publishing the Sermon and Dedication; and that is said to be done with a wicked, malicious and seditious intention, to undermine and subvert her majesty's government, and the Protestant Succession as by law established; to defame her majesty's administration; to asperse the memory of his late majesty; to traduce and condemn the late happy Revolution; to contradict and arraign the Resolutions of both Houses of Parliament; to create jealousies and divisions among her majesty's subjects; and to incite them to sedition and rebellion." These are the corollaries that are drawn from the preamble of the Articles of Impeachment; and these are the facts which must make these Articles criminal, or they cannot be so at all. These facts we utterly abhor and deny, and say we are not guilty of them; and hope it will so appear to your lordships.

My lords, I shall now come to the First Article itself, and shall shortly speak to the three divisions of this Article: it consists of three heads. The first is, that the Doctor suggests and maintains, that the necessary means used to bring about the happy Revolution were odious and unjustifiable. The second is, That his late majesty, in his Declaration, disclaimed the least imputation of Resistance. And the third is, That to impute Resistance to the Revolution, is to cast black and odious colours upon his late majesty and the Revolution.

As to the first, "That he suggests, that the necessary means used to bring about the Revolution were odious and unjustifiable;" my lords, we cannot have a better answer to this, than utterly to deny that we have made any such assertion: we have not done it in words, nor in any words that will bear that construction. We insist, that as it cannot be proved out of the Sermon, so neither out of any other action of his life, or any other Sermon by him preached. We say, that in no part of his Ser-

mon he has affirmed any thing of the necessary means used to bring about the Revolution; that was a point not fit for the Doctor to meddle with, the legislature had taken care of that. On the contrary, we have all along endeavoured, in that Sermon, to clear the Revolution and his late majesty (and we hope we have done it effectually) from the black and odious colours which their greatest enemies had endeavoured to cast upon them. To this part of the Article we have pleaded Not Guilty. We have denied the fact; it has not been proved upon us; the Sermon does not prove it, nor does the Dedication prove it; but they prove quite the contrary, as by several paragraphs of the Sermon compared together will appear.

The second division of this Article is, That his late majesty, in his Declaration, disclaimed the least imputation of Resistance. This fact we do acknowledge, if it be understood as the Doctor explains it, and proves it by the Declaration itself. We take it to be very just and true; the Resistance the Doctor mentions, being such a Resistance as tends to conquest only, as by the words plainly appear, which are printed, and referred to in the Sermon. It can have no other consideration, or meaning, as will appear to any that read that part of the Sermon with any candour, or any ingenuity. The Doctor has taken care to express it in words, that there might be no room for exception. "His highness declares in opposition to those who give it out, that we intend to conquer and enslave these nations, that we have thought fit to add a few words to our Declaration: it is not to be imagined that either those who have invited us, or those who are already come to assist us, can join in a wicked attempt of conquest, to make void their own lawful titles to their honours, estates, and interests." And undoubtedly it is so. He did not come to conquer and enslave us, but to make us a free people; to preserve and restore our religion, laws and liberties; which, my lords, with humble submission, has been the sense of the nation; and notions of a different kind, and such assertions in printed sermons, have been animadverted upon.

Now, if the Doctor, having his eye in that expression on the matter of conquest that others had insinuated, and that the late king did disclaim any such pretence, did express the same by Resistance, the expression we hope is applicable to the subject matter that was before him, and ought not to be wrested or turned to any other purpose. Nothing can shew more his meaning than his own quotation: He refers to king William's Declaration, to justify him in that matter.

The next head is, That "to impute Resistance to the said Revolution, is to cast black and odious colours upon his late majesty, and the said Revolution." This we likewise utterly deny to have maintained; we have said no such thing quite through the Sermon; we have not taken upon us to meddle with that point: It was an improper subject for him to meddle with. The Doctor neither affirms, nor says any thing of those that impute Resistance to the Revolution; but those which the Doctor intended, and which are plainly meant, if the preceding words must be the words to which the subsequent and conclusion of the sentence relates, then they are persons of dangerous dispositions, that place the power in the people; that pretend to a power to call their sovereign to an account at their will and pleasure; positions that stand condemned by the laws of the Church and State, and then vouch the Revolution in defence of these principles. These are the persons mentioned and intended by the Doctor, whose principles and practices cast black and odious colours upon the Revolution.

My lords, the Doctor, we own, in his Sermon, has asserted this general proposition, viz. "Absolute obedience in all things lawful to the supreme power; and the utter illegality of Resistance of the supreme power upon any pretence whatsoever." And this being the article, if we understand some of the gentlemen of the House of Commons aright, on which the whole Impeachment turns; and that if we were clear of this Article, there would be no reason to follow us upon the others; it gives us an occasion to inlarge a little further upon this point.

My lords, Non-Resistance in general we do assert as a rule; yet we agree there is an exception implied in that rule, and that exception, we say, was the case of the Revolution. When this general rule has an exception in it, it must be in a case of the utmost necessity implied, and is not expressed, stated, or determined in any law or act of parliament that I know of, except in the particular hereinafter-mentioned.

My lords, this doctrine is agreeable to the Scriptures; is taught by the Church of England in her homilies, articles and injunctions; by her bishops and fathers; and in all admonitions we have had from the bishops and pastors of the Church, from time to time. I shall not name them, some of them have been named. We shall produce sermons preached before her majesty, your lordships, and the House of Commons, on the most solemn occasions, where this doctrine has been fully asserted, even beyond what the Doctor has laid down. Both your lordships and the Commons have returned thanks to the bishops and clergy that have preached them; and therefore we cannot apprehend ourselves to be worthy of this reprehension. We shall produce them in evidence, and vouch authorities before the Reformation, and in the infancy of it: The homilies which are allowed by the Church, and established by several acts of parliament.

This we take to be agreeable to the laws and statutes of the realm. The law makes it high treason for particular persons to resist the supreme power.

The Spencers in Edward the second's time asserted, That if the king did not govern well, the people might remove him, and that by

force; but that was condemned by two acts of parliament, in E. 2, and E. 3's reign. The act of 25 E. 3, that famous act that has been the standard for treason for many ages, is agreeable to the Doctor's assertion; and when there were breaches made in that law in queen Mary's time, those acts were again repealed: Now I need not repeat, that to resist the executive power, and the person of the king, by that act, is compassing his death, and levying war against him. They have always looked upon it, that resisting the king is levying war, it is a compassing and imagining the death of the king; I shall therefore say no more on that particular act of parliament, but come to later times.

In the act of 12 Car. 2, cap. 30, it is declared, That "it is the undoubted and fundamental law of this kingdom, that neither the Peers of this realm, nor the Commons, nor both together, in parliament or out of parliament, nor the people collectively or representatively, nor any other persons whatsoever, ever had, have, or ought to have, any coercive power over the persons of the kings of this realm." Here is a declaration as full as can be, I am sure as full as the Doctor's Sermon; and yet this declaration, I do agree, must have an exception in a case of the utmost necessity: And I hope there is as much reason to allow the Doctor an exception, as in this act of parliament.

The next act is the Corporation Act, 13 Car. 2, in which all the officers of corporations are directed to swear, "That they do believe, that it is not lawful, upon any pretence whatsoever, to take arms against the king." Here is as full a declaration to be made by all the magistrates of corporations, as general words can carry; and yet I would be understood in every one of these, that there is an exception of necessity; but whether the Doctor was a proper judge of that necessity, I shall take notice by and bye.

The next is the Militia Act, 13 and 14 Car. 2, and there is the same declaration to be made by every lord lieutenant, deputy lieutenant, officer and soldier, "That it is not lawful, upon any pretence whatsoever, to take arms against the king." And the preamble of that act is stronger; for in the preamble of that act it is declared, "That both or either of the Houses of Parliament cannot nor lawfully may raise or levy any war, offensive or defensive, against his majesty, his heirs, or lawful successors."

The next act is the Act of Uniformity, 13 and 14 Car. 2.

The next is the Act for Select Vestries, which injoins all deans, parsons, &c. to make this declaration, "That it is not lawful, upon any pretence whatsoever, to take arms against the king."

The next act is the Act of Association, whereby "all persons are engaged to stand by and assist one another against all his majesty's enemies," without any limitation.

The next is the Act which establishes the Abjuration Oath, 13 and 14 W. 3, which was taken in the late reign, and the acts of 1 and 6 of her majesty's reign, whereby "all persons in office are to swear to defend the king and queen, to the uttermost of their power, against all traitorous conspiracies and attempts whatsoever, which shall be made against her person, crown or dignity." And that these words may have the plain sense put upon them, "They are to declare that they make that recognition, acknowledgement, abjuration, renunciation, and promise, heartily, willingly, and truly, upon the true faith of a Christian." Now this Resistance cannot be agreeable to this abjuration, for to resist is not the way to defend.

My lords, we think that the doctrine of Non-Resistance, as a general proposition, is warranted by the laws of the land; and when there is an exception implied therein, must only be determined by the wisdom of the nation, and not by any one doctor or private person whatsoever. The Doctor's proposition is about Non-Resistance of the supreme power, and we have no reason to take a greater weight upon us than the words of our Sermon; and whatever construction may be put upon it, in relation to the executive power, yet the proposition holds as to the supreme power, which is all the Doctor has asserted. The supreme power is the queen and parliament, and to this supreme power the Doctor has pressed the utter unlawfulness of Resistance; and I have not heard it said by any, that it is lawful to resist the queen in parliament. Here is the strength of the nation, and here there ought to be a standing obedience; otherwise it is setting up the people to be judges, and not the collective body of the people assembled in parliament.

My lords, in a particular case of the utmost necessity, what construction must be made as an exception out of the general rule, must be left to time and circumstances (when such a case shall happen) to determine, and must be determined by the wisdom and strength of the nation, if ever such a case should happen, which I hope never will more.

There is indeed one exception made in one particular case in the Bill of Rights, where it is enacted, that "if the king or queen shall be reconciled to the see of Rome, or profess the Popish religion, or marry a Papist, then such person shall be excluded to inherit the crown, or have regal power in the realm, and that the people shall be absolved of their allegiance." And this I take to be the first stated and determined exception to this general rule that ever was made in any act of parliament.

My lords, we think the government can scarce be just to itself, that does not encourage and command this obedience, this Non-Resistance. This is a rule profitable to all governments, let the nature of them be what they will; it is for the peace and quiet both of Church and State. It would be wise work to have the exception to this rule stated by every one that comes into a pulpit. I know not whether it would not be high-treason in them to do it; sure I am, it would be a high crime: And

if these points are doubtful or disputable (as at least must be agreed,) sure they are no grounds for an impeachment.

What doctrines should a minister of the Church of England preach, if not those that are delivered in the Scriptures, and in the doctrines of the Church? Must he search another rule than the Scriptures, the laws and the fathers of the Church, have laid down? Must he tell the people, that the doctrine of Non-Resistance of the supreme power is the doctrine of the Church of England? Or must he limit this rule, and state the exceptions to it? Sure this would be very strange for the Doctor to do: He must tell them Resistance is unlawful, but there is an exception to that rule; but what that exception is, I must not tell you, but you must find it out as you can. Is not this to pick holes in the duty and allegiance of the subject, and would look like the blind leading the blind?

My lords, we think it would be a very strange thing for a minister of the Gospel to distinguish in this case: It would not be allowed him; it would be an offence for any preacher to do it. He must preach the general proposition, he must inculcate the general rule, and he must preach in the words that the laws of God, and of this land, have delivered it in; he must not vary it, to find meanings to help the people, like a good casuist, to distinguish themselves out of their allegiance.

Now so far we apprehend is the whole Sermon of the Doctor's to be understood, as not rasing the foundations of the government, not inciting to rebellion, but preaching obedience to the laws of God and man. It is a great misfortune for the Doctor to be represented as preaching this doctrine for the sake of the Pretender. We think, at least, it may be a comfort to him, that there is not a syllable of proof or truth in it; and that, on the contrary, the Doctor disclaims all right in the Pretender, by asserting and acknowledging her majesty's right, and expressing a passionate concern, that her majesty is the relict of the royal family.

We have given all the assurance of our fidelity the law demands, we have taken the Oath of Abjuration, and been always submissive to her majesty, and the laws of the nation, given all the security of our allegiance and loyalty that the government required.

The Doctor fully declares his meaning in this Sermon: Does he not all along submit to the government, and pray for the queen and government? He has done it in several places of his Sermon, particularly in one place, which will carry a great weight in it. 'What (says he) I have thus freely spoken, I hope is as much without offence, as it proceeds from a tender concern for her majesty's person, and a hearty zeal for the safety of our Church and Constitution.' Surely after this declaration, in common justice, there ought to be no construction of a man's meaning made by inference. Here is a full declaration, that what he has done he has done in service and zeal to her majesty and the constitution in Church and State.

When there is not through the whole Sermon any plain words to ground such a construction; when there is not the least proof offered, but only by such forced constructions; when different words are picked out from different places, and words so distant are joined together to make up sentences; and then arguments framed, and conclusions drawn from those sentences to make good the impeachment, we think it is much too hard, and hope it never will be endured, to pick part of a line here, and six or eight lines after to pick part of another, and to join the conclusions of one sentence and the beginning of another; this would be to confound all reason and understanding whatsoever. This we take not to be a right way of reasoning, nor a proper evidence to maintain an Impeachment, and we hope your lordships will therefore acquit the Doctor of this Article.

Mr. *Phipps.** My lords, I am also assigned

* In the beginning of the year 1711, sir Constantine Phipps was by queen Anne's Tory ministry appointed lord chancellor of Ireland, which office he held during the remainder of that reign. After it was taken from him by king George the 1st, he returned to his practice at the English bar; and upon the proceedings in the House of Lords, against bishop Atterbury, he was leading counsel for that prelate. See the Case, A. D. 1723. He had been counsel for Rookwood, and for captain Vaughan, on their trials for treason against king William. See their Cases, vol. 13, pp. 139, 485, and had been employed to move for a Habeas Corpus for Bernardi and others. See vol. 13, p. 768. He was also counsel for lord Wintoun, upon his Impeachment in 1715. See the Case, *post*, A. D. 1715.

In the first Irish parliament, during the reign of George the 1st, certain proceedings were had respecting sir Constantine Phipps, upon occasion of which, a characteristic anecdote of Swift's conduct in a visit to Mr. Cope, is related by Swift's editor, Deane Swift. See Nichols's edition of Swift's Works, vol. 1, p. 266. See, too, as to sir Constantine Phipps, Journals of the Irish Commons, December 15, 16, 18, 21, 1713, and those of the Lords, the 18th of the same month, as cited by Boyer, in his History of Queen Anne, pp. 653, 654.

Of the Proceedings against sir Constantine Phipps in the Irish House of Commons, Mr. Curran, in his speech on the right of election of Lord Mayor of the city of Dublin, delivered before the Lord Lieutenant and Privy Council of Ireland, in the year 1790, gave the following representation:

"When in the latter part of the reign of queen Anne, an infernal conspiracy was formed, by the then chancellor (sir Constantine Phipps,) and the privy council, to defeat that happy succession which for three generations

by your lordships to be one of the counsel for Dr. Sacheverell, who, I beg leave to say, I cannot yet think to be a criminal; and, when we have been heard, I hope your lordships will not think him such.

I do admit, as the case is stated by the gentlemen who are the managers for the Commons, that it is a cause of very great moment, and is worthy of your lordships' determination, because it deserves the greatest deliberation; it being a cause as considerable in its consequences to her majesty, the Church, and these kingdoms, as ever came before your lordships.

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hath shed its auspicious influence upon these realms, they commenced their diabolical project with an attack upon the corporate rights of the citizens of Dublin, by an attempt to impose a disaffected lord mayor upon them contrary to the law. Fortunately, my lords, this wicked conspiracy was defeated by the virtue of the people; I will read to your lordships the Resolutions of a Committee of the House of Commons on the subject:

"1st. Resolved, that it is the opinion of this Committee, that soon after the arrival of sir Constantine Phipps, late lord chancellor, and one of the lords justices in this kingdom, in the year 1710, a design was formed and carried on to subvert the constitution and freedom of elections of magistrates of corporations within the new rules, in order to procure persons to be returned for members of parliament, disaffected to the settlement of the crown, on his majesty and his royal issue.

"2nd. Resolved, that it is the opinion of this Committee, that, in pursuance of that design, indirect and illegal methods were taken to subvert the ancient and legal course of electing magistrates in the city of Dublin.

"3rd. Resolved, that it is the opinion of this Committee, that the said sir Constantine Phipps, and those engaged in that evil design, in less than five months, in the year 1711, procured six aldermen duly elected lord mayors, and 14 substantial citizens duly elected sheriffs, and well known to be zealously affected to the Protestant Succession, and members of the established Church, to be disapproved, on pretence that alderman Robert Constantine, as senior alderman, who had not been mayor, had a right to be elected lord mayor.

"4th. Resolved, that it is the opinion of this Committee, that the senior alderman, who had not served as mayor, had not any right by charter, usage, or by law, in force in the city of Dublin, as such, to be elected lord mayor.

"5th. Resolved, that it is the opinion of this Committee, that the said sir Constantine Phipps, and his accomplices, being unable to support the pretended right of seniority, did, in the year 1713, set up a pretended custom or usage for the mayor, in being, to nominate three persons to be in election for lord mayor, one of whom the aldermen were obliged to choose lord mayor."

And therefore, since it has been the Doctor's misfortune to incur the displeasure of the House of Commons, and to lie under the weight of an Impeachment by that great and honourable body, it is his greatest comfort (next to his being innocent) that he has the honour to have your lordships for his judges, and the opportunity of so public a vindication of his innocence; for he does not doubt to give your lordships, and all by whom we have the honour to be heard, full satisfaction, that he is not guilty of any of the crimes charged upon him in any or either of the Articles.

My lords, we agree with the managers, that his late majesty, when Prince of Orange, did, with an armed force, undertake a glorious enterprize for delivering the kingdom from popery and slavery. We admit, that divers subjects well affected to their country joined with and assisted him in that enterprize; and that the enterprize being crowned with success, the late happy Revolution took effect, and was established. We also admit, that the blessed consequences of the Revolution are the enjoyment of our religion and laws, the preservation of her majesty's person, the many advantages arising by her majesty's wise and glorious administration, the prospect of happiness to future ages by the settlement of the succession, and the union of the two kingdoms.

But there are other matters suggested in the preamble, in which we differ with the gentlemen of the House of Commons; for it is therein alleged, "That Doctor Sacheverell preached and published his two Sermons, with a malicious and seditious intention to undermine the government and Protestant Succession, to defame her majesty's administration, to asperse the memory of his late majesty, and traduce and condemn the Revolution, to arraign the resolution of both Houses of Parliament, to create jealousies and divisions among her majesty's subjects, and to incite them to sedition and rebellion." And all this we totally deny.

The offences charged upon the Doctor are of a very high and heinous nature, and the greater the crimes are with which a man is charged, the clearer and plainer ought the evidence to be to maintain and make good that charge. And to make the Doctor a criminal within these Articles, every branch of the Articles must be proved as they are laid. It must be proved that he preached and published these Sermons with such wicked, malicious and seditious intention, as is alleged in the preamble; and the proof ought to be plain and positive; for the laws of England have so guarded the persons and properties of the subjects, that their lives, liberties, or estates cannot be subject to forfeiture, or restraint, by uncertain or conjectural evidence, by strained or unnatural inferences, insinuations, or innuendoes. And although I could cite many authorities and determinations in the courts of Westminster-hall, wherein the judges have expressed their dislike and detestation of convicting men of offences, either capital or criminal, by innu-

endeavours or inferences; yet I forbear to trouble your lordships with any of them, because I have an authority superior to them all to warrant what I have said, and that is the determination and resolution of your lordships in sir Samuel Barnardiston's case, which having been read by sir Simon Harcourt, I forbear to trouble your lordships with a repetition of it.

The next thing therefore to be considered is, whether the Sermons were preached with such malicious and seditious intention as is asserted in the preamble, and if there be such plain, direct, and positive proof, as is by your lordships' determination, in sir Samuel Barnardiston's case, declared to be necessary.

But before I come to speak to any particular Article, I beg leave to observe something, which though it hath not been made a particular charge against the Doctor in any one Article, yet it has been urged and insinuated almost by every one of the managers of the House of Commons to inforce every Article, and that is, that notwithstanding the Doctor's expression of loyalty to the queen, yet his intention is to bring in the Pretender.

It has been objected, as I apprehended (and I beg pardon if I am mistaken) "That the Doctor confines his doctrine of Passive-Obedience and Non-Resistance to a *jure divino* king or queen, and that from thence it was easy to understand against what queen the Doctor excites the people to take up arms." If the queen, who has an hereditary right, and also a right confirmed and established by act of parliament, cannot be said to be a *jure divino* queen, I do not know who can. I did not think that the Doctor who asserts the hereditary right of the queen, could be charged with an intention to bring in the Pretender. I am in your lordships' judgment, whether the denying her majesty's hereditary right be not the most likely way to bring him in: for I submit to your lordships, whether the denying the hereditary right of the queen, be not to suppose an hereditary right in somebody else; and whether that does not leave a way open (when the queen's enemies are strong enough) to bring in that person in whom the hereditary right is supposed.

It is asserted, "That the Doctor's pretended zeal is for her majesty, but his real zeal is for the Pretender: it is hard to say a man means contrary to what he speaks; and that though he declares that the safety, rights and establishment of her majesty's government, with those of the Church, are the things which he so earnestly contends for, and are his only aim and intention; and though he prays that God will preserve her majesty for the comfort and support of the Church and nation, yet it is suggested that his chief aim and design is to dethrone her majesty, to set the crown upon the head of the Pretender, and to establish Popery, or at least a Church independent on the State. And although he preaches up Passive Obedience and Non-Resistance under her majesty's happy administration, yet it is objected he stirs up the people to rebellion, and means Non-Resistance and Passive Obedience to the gentlemen on the other side of the water."

I do agree these things have been urged with great ingenuity; but what proof, what evidence is there of any of these matters thus suggested?

My lords, by the law of England men are not to be harangued out of their lives, liberties, or estates; but as I have observed, it must be plain and positive proof alone that can subject them to a forfeiture: and I submit to your lordships, where a man affirms a thing in his Sermon, if an averment by any body else that he means quite the contrary, be a sufficient evidence to convict a man of High Crimes and Misdemeanors?

There is another matter which I confess puts me under a great difficulty, to determine which way to apply our defence to the first Article; and that is, the different construction which the gentlemen of the House of Commons have made of that part of the Doctor's Sermon, on which the first Article is founded. The gentlemen that spoke to the first Article (if I apprehend them right) affirm, "That the Doctor asserts an unlimited obedience, and the utter illegality of Resistance to the queen, as the supreme executive power, and that such an assertion was a reflection upon the Revolution, which was brought about by the Resistance that was given to the late king James." And all their arguments on the first Article were grounded on this assertion. But a very learned gentleman, who spoke yesterday to the fourth Article, was pleased to object, "That though the Doctor asserted the utter illegality of Resistance to the supreme power, yet he had no where asserted the utter illegality of Resistance to the queen, thereby leaving himself at liberty to resist the queen, and bring in the Pretender."

Now the question is, which of these constructions we must believe. If the construction made by the gentlemen who spoke to the First Article be true, then the Doctor has taken that care of her majesty's person, which he ought, by asserting the utter illegality of resisting her, and hath not left himself at liberty to take up arms against her majesty to bring in the Pretender; and so the great objection made against the Doctor by the learned gentleman who spoke to the fourth Article, falls. But if his construction prevails, there is no reflection on the Revolution, and the first Article falls to the ground; for the reflecting on the Revolution can be only by asserting the illegality of Resistance to the queen, as the supreme executive power; because the Resistance which brought about the Revolution was made to the late king James only, and not against the legislature: but whichsoever of these gentlemen your lordships shall be of opinion is in the right, I beg leave to say, that this may certainly be concluded and inferred, That the construction of that sentence must be very doubtful, in which such learned men differ, and consequently cannot be a charge sufficient and

certain enough to ground a conviction for High Crimes and Misdemeanors. These matters being submitted to your lordships' judgment, I come next to consider the Articles themselves, and shall humbly propose to your lordships' consideration what I have to offer in answer to them, and shall take notice of the several branches of the respective Articles, which the Doctor mentions in his Answer to them.

As to the first branch of the first Article, which charges, the Doctor does suggest and maintain, That the necessary means used to bring about the happy Revolution, were odious and unjustifiable; the Doctor denies there are any such expressions in his Sermon at St. Paul's: and I beg leave to say, that there is not one paragraph or sentence in his Sermon that can support this charge; the necessary means used to bring about the Revolution, not being once mentioned in his Sermon; and therefore I at first doubted whether I had the right Sermon; for I could no more find that sentence in the Doctor's Sermon at St. Paul's, than one of the learned managers could find a text of Scripture, quoted by the Doctor, in his Bible.

One of the gentlemen who spoke to this Article, was pleased to admit, that the words charged in this part of the Article are not in the Doctor's Sermon, but said there are words that are tantamount; so that this branch is to be proved by innuendoes, and yet they have not been pleased to let us know what those words are which do amount to the same signification; and we deny there are any such words.

The last part of the first Article (for I shall consider that next, because it relates to the Revolution) charges, that the Doctor does suggest and maintain, That to impute Resistance to the Revolution, is to cast black and odious colours upon his majesty and the Revolution. In answer to which I must beg leave to take notice, that the words of the Sermon are here transposed and misplaced: for the Doctor does not say, That to impute Resistance to the Revolution, is to cast black and odious colours upon his majesty and the Revolution; but he says, That to urge the Revolution to justify the doctrine of dethroning and murdering of princes, is to cast black and odious colours on his maty and the Revolution; for the Doctor, in page 11, says, that "The new preachers and new politicians pretend to have a power to cancel their allegiance at pleasure, to call their sovereign to an account for high treason, to dethrone and murder him for a criminal, as they did the royal martyr by a judiciary sentence; and that to justify this doctrine, they urge the Revolution of this day:" but (says he) they are the greatest enemies of that, and his late majesty, and the most ungrateful for the deliverance, who endeavour to cast such black and odious colours upon both; so that what he says is no more than that to justify the calling the sovereign to an account for high treason, and the dethroning and murdering of him, by the Revolution, is to cast black and odious colours upon both. And is there any body that has any respect for the glorious and happy Revolution, that has any regard for the preservation of our constitution, can say less? Can there be a greater reflection on the Revolution, than to urge that in vindication of the rebellion in forty-one, as if the cases were alike?

I humbly submit it to your lordships, if there be any thing in his Sermon that can be construed to reflect on the Revolution, if the words be taken according to the natural and genuine sense of them; nor can it be thought the Doctor would cast the least reflection upon it: can it be imagined, that he who is a member of Magdalen College in Oxford, should so soon forget the attempts that were made on their liberties, and would reflect on the Revolution, by which not only he and the rest of the fellows of that college, but all the colleges in both the universities, nay, all her majesty's Protestant subjects, now enjoy their religion, rights and liberties? That he who is a Church of England-man should calumniate the Revolution, by which the best established Church in the world, is preserved from Popish superstition and idolatry: that he who contends so earnestly for the preservation of our constitution, should cast black and odious colours on that, by which alone the Succession is settled and secured in the Protestant line, and her majesty is now lawfully and rightfully seated on the throne of her royal ancestors; on which the Doctor prays, and I hope we all join with him, That she may long continue for the support and comfort of this Church and nation. No, my lords, it is not the Revolution in 1688, but the Revolution in 1648, that he endeavours to blacken, and the principles by which that was brought to pass, those principles which made rebellious subjects take up arms against one of the best princes that ever swayed the sceptres of these kingdoms; those principles which brought that pious martyr to the block, banished the royal family, and set an usurper upon the throne; this is the dethroning, this is the murdering which he means: and can any colours be too black, any colours too odious for such crimes? No doubt, my lords, they cannot; and therefore, instead of charging the Doctor with reflecting on the late happy Revolution, I hope your lordships will be of opinion he vindicates it in the highest degree, when he distinguisheth it from that in 1648, and shews what a wide difference there is between them.

As to that part of the first Article, which says, That his late majesty, in his Declaration, disclaimed the least imputation of Resistance: if the Doctor had not explained himself, it is humbly submitted how far he is justified by his majesty's Declaration. The Declaration says, "We have thought fit to go over to England, and to carry with us a force sufficient, by the blessing of God, to defend us from the violence of evil counsellors;" and that "his expedition is intended for no other design but to have a free and lawful parliament:" so that this expedition

was to have a free parliament, and his forces were to defend him from the violence of evil counsellors, in carrying on that glorious design: and when the late king James abdicated the government, what Resistance was it to supply the vacancy, by settling his late majesty on the throne?

In construction of words and sentences, if any part be ambiguous, and may be taken in a double sense, it ought in favour of life and liberty to be taken in the best sense. But the author declares what his sense is, what he means by it; there it cannot be taken in any other sense than that: and this is the Doctor's case: for he shews, both in his Sermon, and by a note printed at the bottom of the page, that by Resistance he means such Resistance as tended to a conquest: and is he not justified in that by his majesty's Declaration, wherein he disowns the wicked attempt of conquest? And by the vote of both Houses of Parliament, who so highly resented the design of making that expedition a conquest, that they ordered a pamphlet, which attempted to prove it such, to be burnt by the common hangman?

And therefore, if the general words would have carried such a reflection, yet the clause which explains it, being printed with it, prevents such a construction; for there is no reason to apprehend any danger from the poison, when the antidote is administered at the same time. Thus, my lords, I take it, I have answered every branch of this Article, and shewn, that there are not any expressions in the Sermon that can warrant or support any part of it: but, from what I observed from the gentlemen who are the managers, and spoke to this Article, the great foundation and stress upon which this Article depends, is in the sentence in page 11 of the Doctor's Sermon, where he says, "The grand security of our government, and the very pillar upon which it stands, is founded upon the steady belief of the subjects' obligation, to an absolute and unconditional obedience to the supreme power in all things lawful, and the utter illegality of Resistance upon any pretence whatsoever." But I take it, the charge in this Article can never be supported by any words in this sentence; for it is evident, that the absolute and unconditional obedience, which he says subjects are obliged to, is to the supreme power in all things lawful; and the utter illegality of Resistance upon any pretence whatsoever, (being in one and the same sentence,) must be intended to be of the supreme power in all things lawful; so that it is no more than if he had said, It is utterly illegal, upon any account whatsoever, to resist the supreme power in things lawful. Can any aphorism be truer than this, viz. That where the thing commanded by the supreme power is lawful, the Resistance given to it must be unlawful? And this is all the Doctor hath asserted in this paragraph.

If I may have leave to cite a foreign author, Puffendorf says, The supreme power is that in which the legislature is vested; for he says, Human laws are the decrees of the supreme power, concerning matters to be observed by the subjects for the good of the state. And one of the learned managers, who spoke to this Article, admits it to be so. And then the Doctor's assertion is, that the security of our government, and the very pillar on which it stands, is founded upon the steady belief of the subjects' obligation to an absolute and unconditional obedience to the laws made by the queen, Lords and Commons, in parliament assembled, and the utter illegality of resisting such laws on any pretence whatsoever. And if this be not so universal a truth, as not to admit any exception, is humbly submitted to your lordships: and this is an answer to all that hath been said against us on the first Article. For all the gentlemen have founded their discourse on a supposition, that the Doctor preached up an absolute unconditional obedience to, and the utter illegality of, Resistance of the queen; whereas he preaches up the illegality of resisting the supreme power, and that in all things lawful.

Suppose it could be collected, that by the supreme power the Doctor meant the supreme executive power, which is the queen; yet the Doctor cannot be thought by this to reflect on the Revolution, or to condemn that opposition given to king James.

For can it be imagined, that he condemns the opposition given to that prince in the dispensing power, in committing the bishops, depriving men of their freeholds and liberties, by ecclesiastical and other unlawful commissions, and endeavouring to establish Popery, by introducing a foreign power? I say, can it be imagined the Doctor condemns that opposition, when he urges the illegality of Resistance to the supreme power in all things lawful? If those proceedings of king James were lawful, then the Doctor condemns the opposition given to them; but those proceedings being illegal, the opposition given to them is nowhere condemned by the Doctor, nor hath this paragraph in his Sermon any relation to it.

To carry this yet further; suppose that the urging the illegality of Resistance on any pretence whatsoever had been a substantive clause, and had no relation to, or dependance upon, any other clause or sentence; or suppose such a general assertion can be collected from any part of the Doctor's Sermon, yet it must be taken only for a general proposition: and if such general propositions are true in the general, and to a common intent, though they are subject to particular exceptions, yet it is submitted, whether the Doctor is not well warranted in asserting such a general proposition, without mentioning the particular exception? For all general rules have exceptions; and yet the person that cites them, seldom or never mentions the exceptions; for whenever such general propositions are urged, the exceptions are always understood and implied. And there was less reason to mention the exception in this case, because it is so uni-

versally known: it had the concurrence of the whole nation, and was so often established and approved by the legislature.

And the Doctor intirely concurs with the gentlemen of the House of Commons, that the Revolution is an exception; and is not adversary to one of the learned managers, who was pleased to admit, it was the only exception from this general rule. And I submit to your lordships, if the naming that exception would not be a greater reflection on the Revolution, than the preaching that doctrine in general terms, without naming it; for to name it now, since the Revolution, would be to suppose, that it was not implied and understood as an exception out of that general proposition, before the Revolution; and then the exception is to be warranted by the Revolution; which is to infer, that no Resistance was lawful until the Revolution: whereas, we say, that such an extraordinary case as that of the Revolution, was always implied as an exception out of that general doctrine, and so the doctrine justifies the Revolution.

And therefore, the Doctor urging this doctrine of Non-Resistance in such general terms, as all other general propositions are usually urged, it is humbly submitted, whether he can for this be esteemed guilty of High Crimes and Misdemeanors? Especially since this very doctrine hath been affirmed in such general terms, by learned men in all ages, by our Church, and by the legislature; of which I will beg leave to give some few instances.

When the duke of Monmouth was to be executed, his present grace the archbishop of Canterbury, the present lord bishop of Bath and Wells, the then bishops of Ely and Bath and Wells, were appointed by the king to attend his grace. They pressed him to make a particular confession of his crime, and to acknowledge himself guilty of rebellion: His answer was, He died a Protestant of the Church of England. They replied, My lord, if you be of the Church of England, you must acknowledge the doctrine of Non-Resistance to be true.

Archbishop Tillotson, in his letter writ to my lord Russel, July 20, 1683, offers these considerations concerning the point of Resistance. "(1.) That the Christian religion doth plainly forbid the resisting of authority. (2.) That in the same law which establishes our religion, it is declared, it is not lawful upon any pretence whatsoever to take up arms against the king."

Bishop Saunderson, in his Works, pag. 522, says, "No conjuncture of circumstances whatsoever, can make that expedient to be done at any time, that is of itself, and in the kind, unlawful. For a man to take up arms (offensive or defensive) against a lawful sovereign, being a thing in its nature simply, and 'de toto genere' unlawful, may not be done by any man, at any time, in any case, upon any colour or pretence whatsoever."

Thus your lordships observe, how much higher these great and learned men carried this doctrine, than Doctor Sacheverell hath done in his Sermon. And multitudes of instances there are, which shew, that it hath been the concurrent and universal opinion of all the learned men of our Church, in all ages, that Resistance of the sovereign power is not lawful upon any pretence whatsoever. And what punishment, what censures have been inflicted upon, nay, what fault has been found with any of them to this day? One of the learned gentlemen, to inforce the legality of Resistance, was pleased to urge the original contract, as the foundation of the prerogative of the crown, and the liberties of the people; and to assert, that if the supreme executive power invaded the rights of the people, the contract was dissolved, and the people discharged from their allegiance. I will not be positive as to the very words, but I take this to be the purport of them.

When the original contract was made, that learned gentleman did not think fit to inform us. Was it before Magna Charta? If so, why not comprised in it? All the liberties the subjects then laid claim to, being included in that act; and it is much, a thing of that moment, and which was the source and spring of all their liberties, should not be so much as mentioned in it. I never met with it in any of our law books, in my little experience. I never heard it urged in any court before. Was it before the statute of 25 Edw. 3? I never knew it pleaded to any indictment for high treason, nor objected to enervate or take off the force of that statute; And our law books being silent in it, I think it is too tender a point for us, who are no members of any part of the legislature, to meddle with. And therefore, until the legislature have declared what the original contract is, and determined what act of the supreme executive power shall amount to a dissolution of that original contract, and discharge the subjects from their allegiance; I must beg pardon, if I think, that as to Resistance in general, the law stands still upon the foot of the 25th of Edward 3, and that all resistance, except in the case of the Revolution, is still treason within that act.

But to give some further instances, in vindication of the doctrine of Passive Obedience and Non-Resistance. Archbishop Tillotson, in his letter to the lord Russel, says, The doctrine of Non-Resistance is the doctrine of all Protestant Churches: I may add, it was the doctrine of Christ and his Apostles: It was the doctrine in David's time; for it was this doctrine that restrained David from offering violence to king Saul, though that king sought to take away his life. It was that holy man's opinion, that he could not lift up his hand against the Lord's anointed, and be guiltless. Can it be done now with greater innocence than it could then? Is the person of the Lord's anointed now less sacred than it was then? Or have the people now a greater liberty to resist, than David had then? My lords, one of the learned gentlemen said, that in respect of

the patriarchal right, it is a doctrine as old as Adam, and I will not pretend to carry it further.

The next thing therefore to be considered, is, whether this doctrine, that is of so great antiquity, has had any alteration, whether it hath been preached, or urged in any other terms since the Revolution, than it was before. Bishop Beveridge, in a book called "Private Thoughts upon Religion," page 247, 249, 250, says, "Upon any seeming real default or defect of our sovereign, we are to be more earnest in our prayers and intercession for him; but upon no account to fight or rebel against him." This book had her majesty's royal licence, and was countersigned by a noble lord, eminent for learning, and her majesty's principal secretary of state; I mean the right hon. the earl of Sunderland.

I beg leave to cite next a learned gentleman, whose affection to the government, and understanding in antiquity, nobody can doubt: it is Dr. Kennet, who in his Sermon preached before the House of Commons, January 30, 1705, says, "This is the true foundation of that common axiom, the king can do no wrong; because there is no right nor remedy against his royal person." And in the same Sermon he says, "It was declarative of our original constitution, (which one would think should be the original contract, unless the original contract and the original constitution differ) that our legislature upon occasion of this day would have it expressed, that by the undoubted and fundamental laws of this kingdom, neither the Peers of this realm, nor the Commons, nor both together, in parliament, or out of parliament, nor the people collectively or representatively, nor any other persons whatsoever, ever had, have, or ought to have, any coercive power over the persons of the kings of this realm." And I think it is evident, where there can be no coercive power, there cannot be any Resistance. This was but in the year 1705. And was the original contract found out since? If not, then it is plain, the Commons did not think this doctrine to derogate from that contract, or to reflect upon the Revolution; for the Doctor had the thanks of the Commons for his Sermon, and their order to print it.

I do most readily concur with the learned gentlemen of the House of Commons, that that reverend bench is filled with fathers of the Church, who are as great an ornament to it for learning and piety as any of their predecessors, and are most justly famed for their religious moderation; and therefore instances of their asserting this doctrine since the Revolution, will have the greatest weight with your lordships, and tends the most to the satisfaction of that honourable House, upon whose impeachment the Doctor is brought hither.

The bishop of St. Asaph, in his Sermon on the 30th of January, 1699, preached before the lord-mayor, page 18, says, "It is plain that a government cannot possibly subsist for any time, where any kind of violence is allowed against the magistrate: government is at an end, where rulers are exposed to popular assaults."

The bishop of Lincoln, in his Sermon preached before your lordships the 30th of January, 1708, page 15, 16, 17, says, "Wherever that supreme power and authority is lodged, or in whomsoever it resides, we are bound to pay either an active or passive obedience; must either do what it requires or suffer what it inflicts. This is, without controversy, the standing doctrine of Christianity, and has been confirmed by the practices of the best Christians in all ages of the Church." My lord bishop likewise cites the words of the statute of the 12th of Charles 2, which were mentioned by Dr. Kennet; your lordships were pleased to thank my lord bishop for this Sermon, and desired him to print it.

My lord archbishop of York, in his Sermon preached before your lordships in 1700, has stated this doctrine so fully and clearly, that it is not capable of the least contradiction or doubt: his grace expresses himself thus: "That there is such a submission due from all subjects to the supreme authority of the place where they live, as shall tie up their hands from opposing or resisting it by force, is evident from the very nature and ends of political society; and I dare say, there is not that country upon earth, let the form of their government be what it will, (absolute monarchy, aristocracy, or commonwealth) where this is not a part of the constitution. Subjects must obey passively, where they cannot obey actively, otherwise the government would be precarious, and the public peace at the mercy of every malcontent; and a door would be set open to all the insurrections, rebellions, and treasons in the world. Nor is this only a state-doctrine, but the doctrine also of Jesus Christ; and that a necessary and indispensible one too, as sufficiently appears from those famous words of St. Paul, Rom. xiii. 1, 2, which are so plain that they need no comment: so that so long as this text stands in our bibles, the doctrine of Non-Resistance or Passive Obedience must be of obligation to all Christians."

Is not this doctrine confirmed by our Church in her homilies, and enjoined to be read on certain days in the Church? Are not these homilies allowed by the articles? Are not these articles established by the 13th of Eliz. chap. xiv.? And is not that very act confirmed and made perpetual by the Act of Union made in the 5th year of her majesty? Is it not likewise ratified and established by the legislature, by the Act of the 12th of Charles 2, cited in the Sermons of the bishop of Lincoln and Dr. Kennet; by the act of the 13th of Charles 2? For that act of the 13th of Charles 2, chap. iv. obliges all ministers, &c. to subscribe a declaration: the first part whereof was this, "I A. B. do declare that it is not lawful upon any pretence whatsoever to take up arms against the king." Was not that declaration to be swore to by all officers of corporations, by the

Corporation Act; by all lieutenants, deputy lieutenants, and all officers and soldiers of the militia, by the Militia Act? And can any man doubt the truth of that doctrine, which the legislature has obliged the greatest part of the nation so solemnly to subscribe and swear to? We have collected many more instances of this kind, which we will offer to your lordships in the course of our evidence.

Thus your lordships observe how this doctrine has been preached and maintained by archbishops, bishops, and eminent divines, confirmed and established by the Church, and by the legislature: and is this doctrine altered; or hath it received any diminution or restriction by the Revolution? I will not presume to say, but am in your lordships' judgment, on the consideration of the several Sermons beforementioned, preached and published with the respective approbation of both Houses of Parliament since the Revolution. I beseech your lordships, how many Revolutions have there been in this kingdom, and yet this doctrine always continued the same; and I submit, whether we have not the authority of your lordships on this very point; for in a Sermon preached before your lordships on the 30th of January, 1702, by my lord bishop of Carlisle, his lordship expresses himself thus: "Our foundations, it is to be hoped, are not shaken by the weight of those many great and extraordinary revolutions that have passed upon us. The all-wise providence of God has frequently of late (and, as some of us always thought, very graciously) exchanged our governors; but if we ungratefully alter our notions of the divine right of government, and throw off our ancient and primitive rules of Obedience, we shall make an unworthy return for the mercies we have received." I hope I may have your lordships' leave to conclude your lordships are of the same opinion, since my lord bishop had your lordships' thanks for his Sermon, and your desire to print it. I also presume to offer it to your lordships' consideration, whether this very doctrine be not established and enjoined under the obligation of an oath, by the legislature, in the reign of his late majesty, and of her present majesty; I mean in the Abjuration Oath, in which oath there is this clause, viz. "And I do swear that I will bear faith and true allegiance to her majesty, and her will defend to the utmost of my power against all traiterous conspiracies whatsoever, which shall be made against her person, crown and dignity." I believe it will not be denied by any lawyer, that taking up arms against her majesty is high-treason, by the statute of the 25th of Edw. 3, and therefore the parliament having enjoined all persons in office, &c. to defend her majesty against all traitorous conspiracies and attempts, shew, that it was their opinion, that the taking up arms and and resisting her majesty upon any pretence whatsoever, is unlawful, because wheresoever Resistance is lawful, the defence must be unlawful.

I would only beg leave to add, that the punishment inflicted by our law in this world for Resistance, and the judgment denounced against it in the next, sufficiently evinces the illegality of it. Taking up arms and resisting against the queen, by the statute of the 25th of Edw. 3, is high treason; the punishment of which is to be drawn, hanged and quartered. And in what condition they are to be in a future state, St. Paul informs us: for he says, 'They that resist shall receive to themselves damnation.' And surely nobody will contest the truth of that doctrine, the breach of which is attended with such dismal consequences. I hope, therefore, since this doctrine has been so universally preached and approved, the preaching of it now shall not be thought to reflect on the Revolution, more than it has done hitherto, since her majesty's happy accession to the throne; and more than it did in the reign of his late majesty, who was the glorious instrument of that happy Revolution. Was not his majesty apprized of the necessary means by which the Revolution was brought about? Had not his late majesty as tender a regard for the honour of the Revolution, as any body else can be supposed to have? Nobody can doubt it: and yet this doctrine was preached in his time, in as general terms as the Doctor has preached it; and not only without objection, but with the approbation of his majesty, and both Houses of Parliament. And if all this will not vindicate the doctrine; yet, I hope, it will at least excuse the Doctor from being a criminal.

Can he be a criminal for preaching that doctrine which has been asserted by so many archbishops, bishops, and other eminent divines, not only with impunity, but even with the approbation of both Houses of Parliament? That doctrine which is injoined by our Church, ratified, confirmed and established by the legislature, and which is the doctrine of all the Protestant churches in the world, which was the doctrine of our Saviour himself, and which hath been the doctrine ever since Adam, and will continue so as long as there is a Bible upon earth?

Can a man be a criminal for preaching the doctrine of Passive Obedience and Non Resistance, though without restriction and limitation, while we are so happy as to have her majesty to reign over us, upon whose life the welfare and happiness of these nations depend, as much (I hope I may be excused if I say more) than the welfare of any nation ever did upon the life of any prince whatsoever since the foundation of the world? And therefore we are sure your lordships will not lessen her security; and the rather, because it is impossible, during her majesty's life, any invasion or the least attempt should be made upon that religion, that liberty and property, for the preservation of which she run so great a hazard.

This is what I humbly offer to your lordships, on behalf of my client, on this head. And though I have mentioned these instances, to shew in what general sense the doctrine of Passive Obedience has been preached, and that

if the Doctor had asserted it in such general terms, he could be no more a criminal than others; yet it must be always understood, that he does not assert it in such general terms, but only asserts the utter illegality of Resistance to the supreme power in all things lawful.

Before I quit this Article, I would take notice, it has been objected, that it is highly improper and unreasonable for divines in their pulpits to meddle with matters of this nature: in answer to which, I would (besides the injunction that the apostles have laid upon their successors, to put people in mind of being subject to principalities and powers) humbly offer to your lordships' consideration, a bold and seditious paragraph in a pamphlet printed in 1705, called The Review; which hath this paragraph, "If the next parliament should pursue the steps of the last, the nation, in my opinion, will be so much nearer that crisis of time, when English liberty, being brought to the last extremity, must open the magazine of original power." The same author, speaking of the family of the Stuarts, calls it "the line of all the world, famed for blood, and that had ravaged the best families of the kingdom." And in another paragraph he says, "In short, if Jure Divino comes upon the stage, the queen has no more title to the crown than my lord mayor's horse: all the people are bound by the laws of God to depose her as an usurper, and restore their rightful and lawful king James 3." If therefore to defame the whole line of her majesty; to assert that the Pretender has an hereditary right to the crown; if telling the people, if they do not like the parliament, they must have recourse to the magazine of original power, be not sounding a trumpet to rebellion, and does not make this doctrine seasonable and necessary to be preached at this time, we submit it to your lordships. And therefore, I humbly hope, that instead of laying a brand of indelible infamy on this doctrine, your lordships, for the preservation of her majesty, and her successors, and for the securing the peace of the kingdom, will convey this doctrine as intire, and in as full force, down to posterity, as it was transmitted to your lordships by your noble progenitors.

And as to what one of the honourable gentlemen concluded with, viz. That your lordships would direct what doctrine the ministers should preach:

If there be any doctrine in the Bible not proper to be preached; if there be any doctrine except that of the Deity, of greater antiquity than this, which commences from Adam, or is more useful or necessary for the preservation of the government, then we submit this doctrine should be let alone. Upon the whole matter, I am in your lordships' judgment, if, upon consideration of what hath been said, your lordships can be of opinion, that the Doctor is guilty of the High Crimes and Misdemeanors contained in the first Article.

Mr. Dee. May it please your lordships, after so much has been said, and so well pressed by the gentlemen that have gone before me, of the doctrine of Non Resistance (which is so well established by the opinion of the fathers of the Church, and founded on the laws of the land) I should think myself very unmannerly to spend your lordships' time in repeating it in worse words. I beg leave only to make a few remarks: First, on some generals, and then to add a few words, and draw an inference or two from one law that has not yet been taken notice of.

My lords, we readily join with the gentlemen who managed on behalf of the House of Commons, in desiring your lordships to assert fundamentals; and desire your lordships to consider the ancient legal constitution of the kingdom. This we readily comply with them in, and doubt not but your lordships will do it.

My lords, there was some notice taken of the time and place where this Sermon was preached; and it was said by one of the gentlemen, that it was an improper time, because it was a doctrine fit only to be preached in the reign of a bad prince, but not of a good one. My lords, indeed I am at a loss to understand that: I think, if at any time, it is seasonable when we have so gracious a princess upon the throne, much rather than in the reign of a tyrant or usurper.

My lords, this doctrine has been made appear to your lordships to be consonant to the laws of God, and the laws of the land; and when we have laid before your lordships our proofs that have been opened, I hope your lordships will allow we have proved our case.

The gentlemen on the other side said, they had proved their Articles: but how? In no other way than by reading the Sermon, which we hope shall be permitted to speak for itself.

My lords, it was said, that the municipal laws of the land signify nothing only in times of peace. What the meaning of that is, I know not, unless that the laws must be silent in the time of war; but the way to maintain peace, and to prevent blood and wars at home, is to preserve our laws.

My lords, it has been likewise urged as a maxim, "That there can be no right, but there must be a remedy to preserve it." And thereupon it was hinted, as if there was some secret right vested in the people to do something they did not think fit to name. That saying, my lords, I take to be a maxim in the law, and to relate only to legal matters; and the meaning of it to be, that when any man has a property, the same law that gives property, gives a remedy, if the same be invaded. But I never understood that maxim to be meant of a remedy by force; and I am sure, in most cases, such a remedy is worse than the disease.

My lords, we would not be thought (I am sure no gentleman of our side would be thought) in the least to reflect on the Revolution mentioned in the Impeachment; nor does any thing, as we think, that the Doctor has said in his Sermon, in the least look that way. The

general position of the utter illegality of resisting the supreme power, does (as it has been observed already) imply in it a condition, (which perhaps may extend to some other cases) and, as we say, extends to that of the Revolution.

One of the managers instanced in the fourth command, which in general forbids any work to be done on the Lord's days; and yet, says he, works of necessity and mercy are allowed to be done on that day, and are an implied exception. The like we say of the implied exception to the general doctrine laid down by the Doctor of the illegality of Resistance.

My lords, certainly there is no room to suppose any reflection to be made on his late majesty; for surely his majesty wanted no excuse for his coming hither; nor could he be guilty of any thing that we properly call Resistance. He was a sovereign prince, and might do what he thought fit. He owed no allegiance to any one, so could not be said to resist, in the sense Resistance bears in the Doctor's Sermon, which is the Resistance by subjects to the supreme power.

My lords, I now beg leave to mention the act of the second year of king William and queen Mary, intitled, "An Act for a general Pardon;' by the last clause whereof it is provided, "That nothing in that act shall extend to pardon, or discharge any one for counselling or procuring the raising war against their majesties after the 13th day of February, 1688, unless such person shall before the 26th of July take the following oath." Then follows the Oath of Allegiance. From hence I beg leave to make an inference or two: First, that it was the sense of the legislature at that time, that those persons that contrived or abetted the raising war against their majesties, after they came to the crown, were guilty of a high crime, and stood in need of a pardon. So that if any thing had shaken the doctrine of the illegality of Resistance, here Resistance is made as criminal as it was before. Secondly, it appears by that clause to be the opinion of the legislature, that by the Oath of Allegiance, as it is now framed, this doctrine of the utter illegality of Resistance is firmly established. For, my lords, to what purpose should that oath be made the condition of a pardon for having resisted, unless they thought that oath laid an obligation on the persons taking it not to do so again?

My lords, that construction which some of the managers for the Commons put on the Doctor's Sermon, that this notion of Non-Resistance could only be applied to some body beyond sea, we think to be very hard and strained: I am sure it don't appear from any thing the Doctor has said in his Sermon; but the contrary plainly appears; for the Doctor doth assert her majesty's hereditary right, and yet doth not reflect on the Revolution; for though he speaks of her majesty's hereditary right, he does not any where say, that she has no other than an hereditary right in her. And it was owned by one of the gentlemen that managed for the House of Commons, that his late majesty had a single right by the Act of Settlement; but that her majesty has a twofold right, a right according to the Act of Settlement, and an hereditary right too.

My lords, there has been a great deal of time spent, therefore I shall only make this one remark further, that is, that the learned managers for the House of Commons have drawn very many inferences, by their skill and ingenuity, from passages in the Doctor's Sermon, which I believe none of your lordships can think the Doctor ever thought of, when he was composing his Sermon, or delivering it in the pulpit.

Dr. *Henchman.* My lords, I am likewise assigned counsel for Dr. Sacheverell; but if he has been represented by the learned managers in his proper colours, if he has been set before your lordships in a true light, and with his mask off, I must beg leave to say, that nothing less than the commands of this honourable House could prevail with any one to appear in his defence. If he is a mover of sedition, and an underminer of the Protestant Succession and present establishment; if he has fomented destructive divisions, and excited his fellow-subjects to arms and violence, and has taken all advantages to vent his seditious notions in the most public manner, I must humbly think that nobody would dare to open his mouth in his behalf in the face of the government, and before the united legislature of the whole kingdom. I protest for myself, I would not do it, and I believe I may say the same for all the gentlemen that have spoken before me.

My lords, the general part of these Articles has been already largely spoken to, and I shall therefore apply myself directly to the first Article, and the first branch of that Article, which has been made the ground of this whole accusation, viz. "That he does suggest and maintain that the necessary means used to bring about the late happy Revolution were odious and unjustifiable." I must own this is a charge of a very high nature, and has been aggravated to the utmost by the great pains that the gentlemen of the honourable House of Commons have taken, and the elaborate speeches that have been made on this head.

My lords, the justice of the Revolution is too plain to need any vindication, every one of us is sensible of the happy effects of it; and therefore for any one to cast black and odious colours on it, would be, as has been truly said by the honourable managers, "A reflection on his late majesty, and must bring a foul imputation on her present majesty and government;" which, if the Revolution be unjustifiable, must be an usurpation, and all her subjects rebels.

My lords, the clause made use of to prove this part of the Article, is in the 11th page of the Sermon at St. Paul's, and has been often read: "The grand security of our government

and the very pillar on which it stands, is founded upon the steady belief of the subjects obligation to an absolute and unconditional obedience to the supreme power in all things lawful, and the utter illegality of Resistance upon any pretence whatsoever." This, my lords, is the ground of the Commons Impeachment, because here they say the Doctor condemns all Resistance, and in that the Resistance which was necessary to be made use of at the Revolution.

Whether what is here laid down be agreeable to the doctrine of the Church of England, is not my province to determine, neither shall I now mis-spend your lordships' time in establishing this doctrine; that has been already sufficiently done, and the Doctor himself abundantly vindicated, from the doctrine of St. Paul himself, from the express doctrine of the Church of England set forth in her homilies, from the writings of bishops and divines, dead and living, from the known and repeated laws of the land, and from the reasonableness of laying down a general rule without any exception. What farther vindication can be necessary? Or how can a good subject of the realm, and a true son of the Church, better make his defence than from the laws of the one, and the doctrine of the other? But because the great objection has been, That this doctrine is here laid down without any limitation or exception at all; and being myself of a different profession from the gentlemen that have spoken before me, I shall take a different way in vindication of this passage, and beg leave to follow the method prescribed by one of the learned managers of the House of Commons. It was said by one of them, 'Ex ore suo judicabitur.' My lords, let him speak for himself, and then it will be seen if this passage may not be justified by the very same methods that have been made use of to accuse him. If nothing will satisfy the gentlemen of the House of Commons but an exception, an exception they shall have, and that out of his own mouth. It is in the 10th page, and the beginning of that very paragraph where the whole foundation of this accusation is laid. But I do not well know whether I may venture to mention it, lest it should subject him to a prosecution in the spiritual court, or the censure of his diocesan; but if it may help to acquit him from this impeachment, I will admit him to run the risk of any prosecution elsewhere.

The clause is this: "But, secondly, men may be denominated False Brethren, with relation to the state, government, or society of which they are members. The constitutions of most governments differing according to their several frames and laws upon which they are built and founded, it is impossible to lay down any one universal rule, as the scheme and measure of obedience, that may square to every one of them."

My lords, this is an observable instance of this gentleman's good temper and moderation; nothing can be said more like a good Christian, and a good subject, and a man of temper: he is not here for bringing all things to his own rule, but every government must stand upon its own foundation, and be governed according to its own rules. But he goes on; "Only this maxim in general, I presume, may be established for the safety, tranquillity, and support of all governments, that no innovation whatsoever should be allowed in the fundamental constitution of any state, without a very pressing, nay, unavoidable necessity for it."

My lords, in these words there is a plain exception made, whenever the case of an unavoidable necessity shall happen. Nobody will deny but that the Revolution was such an unavoidable case, and of necessity, and what cannot be reflected on, but with great satisfaction and thanks to God for bringing it about. But it seems very strange that this exception should stand so very full and plain in the very front of that paragraph from which the learned managers have chiefly drawn this accusation, and yet never be so much as once taken notice of by them. Passages at a much greater distance have been connected in order to accuse him; and there can be no reason given why the subsequent passage in the same paragraph should not be explained by this; why, what in the beginning is said of all governments in general, should not be extended to that part where he speaks particularly of our own constitution. This, no doubt of it, he had in his thoughts, and will, I hope, sufficiently vindicate him from this charge.

I shall trouble your lordships no longer on this head, but only observe, that the Doctor in his Answer has put himself upon his defence, That this doctrine is agreeable to the doctrine of the Church of England and the laws of the land, and we are ready to produce his vouchers, and make it evident to your lordships.

Sir *Simon Harcourt.* My lords, if we have not already tired your lordships, there is this wide difference between the managers for the House of Commons and us; they desire your lordships to trust them, and to take their words in every thing; we humbly beg your lordships to take our words in nothing, but that you will give us leave to lay before you the testimonies for every thing we have opened; but they being very long, we humbly submit it to your lordships, whether it will be proper for us now to produce them? The first evidence we desire to read is, some godly and wholesome doctrine contained in the homilies; we have, my lords, for your lordships' ease, collected them by a person that is ready to swear to them. We humbly submit it to your lordships, whether it shall be read out of the writing, or whether the books themselves shall be produced; we shall observe your lordships' commands, and proceed which way your lordships please.

Mr. *Dodd.* My lords, we are ready to observe your lordships' directions in this matter: we have collected the passages out of the homilies, the articles, the sermons, and acts of

parliament; and have a person ready to make oath that they are truly collected. But if there be any objection, we are ready to refer to the books themselves, and have them all here ready to produce.

Mr. *Phipps*. If your lordships please, the witness may be sworn.

Then Mr. *Trapp* was sworn.

Lord Chancellor. If you offer any thing in evidence, you must take the same method that the gentlemen of the House of Commons did; it must be proved, and then delivered in at the table, and there read.

Sir *Joseph Jekyll*. My lords, we have given the gentlemen that are counsel for the prisoner, no disturbance in any thing they have said during their defence, so that we might come to a determination as speedily as possible in this trial; otherwise every body must think, we had reason to object to some things that have been said by the counsel. That which they are now going to do, is what we think proper to deliberate upon; and, according to former precedents, we desire to withdraw, and we will attend your lordships again presently.

Mr. *Smith*. My lords, I beg leave to speak one word. We have endeavoured to behave ourselves before your lordships, according to the duty we owe to the House of Commons, and to your lordships: we think there is something offered, that is fit for us to consider of. We do not propose more, than for the managers to withdraw for a few minutes; for we think we have something to offer to your lordships.

[Accordingly, the Managers withdrew; and then the Lords adjourned to the House above: and in a short time their lordships being returned, and seated as before, and the Managers being returned to the place appointed for them at their lordships' bar; proclamation for silence was made by the serjeant at arms.]

Sir *Joseph Jekyll*. My lords, the managers withdrew for two reasons; the one, to consider of several expressions that fell from the counsel at the bar, which we had reason to take exceptions to; the other was, to consider of the evidence they offer to your lordships. For the first; the managers are so desirous that no interruption should be given to the Doctor's counsel in his defence, that they at present take no notice of it, but reserve that matter to be taken notice of at such other time as they shall think proper. As to the second, the managers being unwilling the Doctor should be deprived of any thing that his counsel can fancy is material for his defence, they are contented to let them go on in the way they proposed; but to save your lordships' time, we admit the books, sermons and pamphlets, to be as they have opened them.

Sir *Simon Harcourt*. My lords, we humbly pray they may be read; but we have not opened the tenth part of them.

Mr. *Dodd*. We have collected them, to save your lordships' time; but we have not opened them, because we reserved them to be read.

Mr. *Phipps*. My lords, the witness is sworn. Is that a true copy of what it refers to?

Mr. *Trapp*. I did compare them with the originals: it is a transcript from the original.

Mr. *Phipps*. Are they entire paragraphs?

Mr. *Trapp*. They are most of them entire passages.

Lord Chancellor. Gentlemen of the House of Commons, do you object to the evidence?

Sir *Joseph Jekyll*. No, my lords.

[Then the Lords adjourned to their House above.]

Sixth Day.

Saturday, March 4.

The Lords being seated as usual, and the Commons in a Committee of the whole House, and the Managers at their lordships' bar; the usual proclamations being also made;

And Dr. Sacheverell appearing at the bar:

Lord Chancellor. Gentlemen, you who are counsel for Dr. Sacheverell were proceeding to your evidence, and had offered some papers which you desired to be read in evidence; and the gentlemen of the House of Commons did agree to let them be read, as you desired.

Mr. *Dodd*. My lords, we pray those papers may be read.

Mr. *Phipps*. My lords, the defendant does in his Answer assert, "That the doctrine of the illegality of Resistance to the supreme power is contained in the homilies, and approved by many of the divines of the Church of England:" we desire now to have those homilies, and the sermons of those divines, read.

Sir *Joseph Jekyll*. My lords, the gentlemen that opened for the Doctor, were pleased to mention some homilies, and other books, one intiled, A Necessary Doctrine and Erudition for any Christian man; which they desired might be read; and said, they had collected the passages out of them, in a paper which they offered to your lordships. We have looked into that paper, and find extracts out of gazettes, and other papers. We are willing to let them read the homilies, and that other book called, The Erudition of any Christian Man; but when they come to the others, we pray they may produce the books or papers themselves.

Mr. *Dodd*. My lords, we shall observe it accordingly.

Mr. *Phipps*. We pray we may begin with the book entitled, The Erudition for any Christian Man.

(Clerk reads the Paper Abstract.)

"A Necessary Doctrine and Erudition for any Christian Man; set further by the king's majesty of England, &c. Anno 34 H. 8.

In the Exposition of the Fyfthe Commandment.

"And by this commandment also, subjects

be bounde not to withdrawe their said fealtie, trouth, love, and obedience towards their prince, for any cause whatsoever it be; ne for any cause they may conspire against his person, ne do any thing towards the hindrance or hurt thereof, nor of his estate." (Fol. 113.)

In the Exposition of the Syxte Commandment.

"Moreover, no subjects may draw their swords against their prince; for any cause, whatsoever it be." (Fol. 187, 9.)

Mr. *Dodd.* If your lordships please, that we may now read several passages in the homilies.

(*Clerk* reads.)

The Second Part of the Sermon of Obedience, page 110.

"Whereby Christ taught us plainly, that even the wicked rulers have their power and authority from God; and therefore it is not lawful for their subjects to withstand them, although they abuse their power.

"But nevertheless, in that case we may not in any wise withstand violently, or rebel against rulers, or make any insurrection, sedition or tumults, either by force of arms, or otherwise, against the anointed of the Lord, or any of his officers; but we must in such case patiently suffer all wrongs and injuries, referring the judgment of our cause only to God." (Ibid. p. 183.)

The Third Part of the Sermon of Obedience, page 114.

"Yee have heard before in this Sermon of good order and obedience, manifestly proved, both by the scriptures and examples, that all subjects are bounden to obey their magistrates, and for no cause to resist, or withstand, or rebel, or make any sedition against them, yea although they be wicked men."

First Part of the Sermon against wilful Rebellion, page 589.

"What shall subjects do then? Shall they obey valiant, stout, wise and good princes; and contemn, disobey, and rebel against children being their princes, or against undiscreet and evil governors? God forbid! For, first, what a perilous thing were it to commit unto the subjects the judgment, which prince is wise and godly, and his government good, and which is otherwise? As though the foot must judge of the head! An enterprize very heinous, and must needs breed rebellion.

"And whereas, indeed, a rebel is worse than the worst prince, and rebellion worse than the worst government of the worst prince that hitherto hath been." (Ibid. p. 590.)

Second Part of the Sermon against wilful Rebellion, page 600.

"Now, let David answer to such demands, as men desirous of rebellion do use to make: shall not we, especially being so good men as we are, rise and rebel against a prince hated of God, and God's enemy; and therefore like not to prosper either in war or peace, but to be hurtful and pernicious to the commonwealth? No, saith good and godly David.

"But say they, shall we not rise and rebel against so unkind a prince, nothing considering or regarding our true, faithful and painful service, or the safeguard of our posterity? No, saith good David. (Ibid. 601.)

"Shall we not rise and rebel against our known, mortal, and deadly enemy, that seeketh our lives? No, saith godly David.

"Shall we not assemble an army of such good fellows as we are, and by hazarding of our lives, and the lives of such as shall withstand us, and withal hazarding the whole estate of our country, remove so haughty a prince? No, saith godly David.

"What shall we then do to an evil, to an unkind prince, an enemy to us, hated of God, hurtful to the commonwealth, &c? Lay no violent hand upon him, saith good David; but let him live, until God appoint and work his end, either by natural death, or in war, by lawful enemies, not by traiterous subjects.

"If king David would make these answers, as by his deeds and words recorded in the holy scriptures indeed he doth make, unto all such demands concerning rebelling against evil princes, unkind princes, cruel princes, princes that be to their good subjects mortal enemies, princes that are out of God's favour, and so hurtful, or like to be hurtful for the commonwealth." (Ibid. p. 602.)

Mr. *Dodd.* If your lordships' please now, that we may read the thirty-fifth Article of the Church of England, which approves these homilies.

Mr. *Phipps.* We opened, that these homilies were approved of by the Articles of the Church of England, as containing sound and wholesome doctrine: we pray the thirty-fifth Article may be read.

(*Clerk* reads.)

Article the Thirty-fifth.—*Of Homilies.*

"The Second Book of Homilies, the several titles whereof we have joined under this Article, doth contain a godly and wholesome doctrine, and necessary for these times; as doth the former book of Homilies, which were set forth in the time of Edward the sixth. And therefore we judge them to be read in churches by the ministers, diligently and distinctly, that they may be understanded of the people. The Names of the Homilies. 1. Of the right use of the Church. 2. Against Peril of Idolatry. 3. Of repairing and keeping clean of Churches. 4. Of good Works; first, of Fasting. 5. Against Gluttony and Drunkenness. 6. Against Excess of Apparel. 7. Of Prayer. 8. Of the Place and Time of Prayer. 9. That Common Prayers and Sacraments ought to be ministered in a known tongue. 10. Of the Reverend Estimation of God's Word. 11. Of Almsdoing. 12. Of the Nativity of Christ. 13. Of the Passion of Christ. 14. Of the Resur-

rection of Christ. 15. Of the worthy receiving the Sacrament of the Body and Blood of Christ. 16. Of the Gifts of the Holy Ghost. 17. For the Rogation-Days. 18. Of the State of Matrimony. 19. Of Repentance. 20. Against Idleness. 21. Against Rebellion."

Mr. *Phipps.* By the statute of 13 Eliz. these Articles are confirmed; I believe the gentlemen of the House of Commons will allow of it.

Mr. *Dodd.* They are confirmed by the Act of Uniformity; and we think we need not spend your lordships' time in reading it.

Sir *Jos. Jekyll.* My lords, we told them, that we were willing to admit all they opened; and then we admit this.

Mr. *Dodd.* If your lordships please we will go on with the abstract.

Mr. *Phipps.* The gentlemen say, that they admit us to read what we opened. Now what we are going to read next, we did not open; and therefore we submit it to your lordships, whether we shall read out of the abstract, or produce the book itself?

Sir *Jos. Jekyll.* My lords, we desire to know what it is they would read?

Mr. *Phipps.* It is bishop Overall's Convocation-book.

Mr. *Dee.* If your lordships please, we shall produce the book; because there are some broken passages collected, and there may be some objection, if the book be not produced.

Mr. *Phipps.* My lords, we hope the whole canon which is mentioned in this book, though it is recited by parcels, shall be read.

Clerk reads.] "And therefore——

Sir *Jos. Jekyll.* My lords, they are reading a passage out of this book. We might object, That a printed book is no proof of a canon: and that they ought to make a legal proof of it. But that which we object, is, that they begin in the middle of a sentence: Your lordships observe, the clerk begins with the words, And therefore. I pray, he may read at the beginning of a sentence.

Mr. *Phipps.* My lords, where the clerk began, was the beginning of that canon; but it being at the end of another canon, is the reason that it begins And therefore.

Clerk reads.] Bishop Overall, p. 107, Can. 1. "And therefore, if man shall affirm under colour of any thing that is in the Scriptures, either that the doctrine of grace in the New Testament doth more abolish the rules of nature, or moral law of God, than it did in the Old; or, that through faith the said law was not rather established, than in any sort impeached; or, that because as many as believe are redeemed, and made free from the curse of the law, they are therefore exempted, and free from the obedience of the law; or, that by the incarnation of our Saviour Christ, obedience to the fifth commandment, touching honours due to parents and princes, was in any sort impeached, the rest of the law being established; or that our Saviour Christ having undertaken the fulfilling of the whole law, (as far forth, at the least, as ever mankind was bound to have fulfilled it) came short in this one law, by exempting himself from any obedience due to the civil magistrate; or, that he, having tied himself according to the said commandment, as well to the obedience of the civil magistrate, as the obedience which was due to his parents, did not, whilst he lived in the world, fulfil the law wholly concerning them both; or, that he did any way, or at any time, encourage the Jews, or any other, directly or indirectly, to rebel, for any cause whatsoever, against the Roman emperor or any of the subordinate magistrates, or, that he did not very willingly, both himself pay tribute to Cæsar, and also advise the Jews so to do; or that when he willed the Jews to pay tribute to Cæsar, including therein their duty of obedience unto him, he did not therein deal plainly and sincerely, but meant secretly that they should be bound no longer to be obedient unto him, but until by force they should be able to resist him; or, that he did not utterly and truly condemn all devices, conferences and resolutions whatsoever, either in his own apostles, or in any other persons, for the using of force against civil authority; or, that it is, or can be more lawful for any private persons, either of St. Peter's calling, or of any other profession, to draw their swords against authority, though in their rash zeal they should hold it lawful so to do, for the preservation of religion, than it was for St. Peter for the preservation of his master's life; or, that by Christ's words above-mentioned, all subjects (of what sort soever) without exception, ought not, by the law of God, to perish with the sword, that take and use the sword for any cause, against kings and sovereign princes, under whom they were born, or under whose jurisdiction they do inhabit; or, that seeing our Saviour Christ would not have the Samaritans to be destroyed with fire from heaven, although they were at that time divided in religion from the Jews, and refused to receive him in person, it is not to be ascribed to the spirit of Satan for any private men to attempt by gunpowder, and fire from hell, to blow up and destroy their sovereign, and the whole state of the country where they were born and bred, because in their conceits they refused some part of Christ's doctrine and government; or that Christ did not well, and as the said fifth commandment did require, in submitting himself as he did to authority, although 'he was first sent 'for with swords and staves, as if he had been 'a thief, and then afterward carried to Pilate, 'and by him (albeit he found no evil in him) 'condemned to death;' (Matt. xxiv. 55,) or that by any doctrine of example which Christ ever taught, or hath left upon good record, it can be proved lawful to any subjects, for any cause of what nature soever, to decline either the authority and jurisdiction of their sovereign princes, or of any their lawful deputies and inferior magistrates ruling under them: He doth greatly err."

Mr. *Phipps.* My lords, we opened, that from the time of the Reformation this had been the

doctrine of the Church. We desire to begin, and shew it was archbishop Cranmer's opinion: *In* Strype's Memorial of Archbishop Cranmer.

Clerk reads.] London edition, p. 387, folio. "The second exhortation is, That next unto God, you obey your king and queen willingly and gladly, without murmur or grudging, and not for fear of them only, but much more for the fear of God. Knowing that they be God's ministers, appointed by God to rule and govern you; and therefore whoso resisteth them, resisteth God's ordinance."

Mr. *Phipps.* My lords, we now offer a declaration of bishop Ferrar, bishop Hooper, bishop Coverdale, and about nine other bishops, which is in Fox's History.

Clerk reads.] Vol. 3, p. 101. "Humbly requiring and in the bowels of our Saviour Jesus Christ, beseeching all that fear God to behave themselves as obedient subjects to the queen's highness, and the superior powers which are ordained of God, under her; rather, after our example, to give their heads to the block, than in any point to rebel, or once to mutter against the Lord's anointed."

Mr. *Dodd.* If your lordships please, he may read the names of those persons that have subscribed it at the end of it.

Clerk reads.] The 8th of May, A. D. 1554. "The names of the prisoned preachers subscribing to this declaration, Robert Menaven. alias Robert Ferrar, Rowland Taylor, John Philpott, John Bradford, John Wigorn and Glouc. Episcopus, alias John Hooper, Edward Crome, John Rogers, Laurence Saunders, Edmund Lawrence, J. P. T. M.——To these things abovesaid do I Miles Coverdale, late of Exon, consent and agree with these nine afflicted brethren, being prisoners, mine own hand."

Mr. *Phipps.* My lords, the next we offer is the opinion of bishop Jewell in his Defence of the Apology for the Church of England, in answer to Mr. Harding.

Clerk reads.] "We teach the people, as St. Paul doth, to be subject to the higher powers, not only for fear, but also for conscience. We teach them, that whoso striketh with the swerde by private authority, shall perish with the swerde. If the prince happen to be wicked, or cruel, or burthenous, we teach them to say with St. Ambrose, 'Arma nostra sunt Preces 'et Lachrymæ:' Tears and prayers be our weapons." Printed, A. D. 1568, fol. 19.

Mr. *Dodd.* My lords, the next is Mr. Hooker in his Ecclesiastical Polity.

Clerk reads.] "That subjection which we owe to lawful powers, doth not only import, that we should be under them by order of our state, but that we shew all submission towards them both by honour and obedience. He that resisteth them resisteth God. And resisted they be, if either the authority itself, which they exercise, be denied; as by Anabaptists all secular jurisdictions; or if resistance be made but only so far forth as doth touch their persons, which are invested with power; (for they which said 'Nolumus hunc regnare,' did not utterly exclude regiment; nor did they wish all kind of government clearly removed, which would not at the first have David to govern;) or if that which they do by virtue of their power, namely their laws, edicts, services, or other acts of jurisdiction, contrary to the blessed Apostle's most holy rule, 'Obey them 'who have the oversight of you,' Heb. 13, 17, be not suffered to take effect, or if they do take effect, yet is not the will of God thereby satisfied neither, as long as that which we do is contemptuously or repiningly done, because we can do no otherwise. In such sort the Israelites in the desart obeyed Moses; and were, notwithstanding, deservedly plagued for disobedience. The Apostle's precept therefore is, 'Be subject even for God's sake; be subject 'not for fear, but of mere conscience, knowing, 'that he which resisteth them, purchaseth to 'himself condemnation." Fol. 470, London edition 1705.

Gen. *Stanhope.* My lords, since Hooker's Ecclesiastical Polity is before your lordships, and they have read that part, I pray that from page 444, to the latter end of page 446, may likewise be read.

Mr. *Dodd.* We submit it to your lordships, whether it is proper to break into our defence? Or whether the gentlemen of the House of Commons will read what they think proper when they come to reply? Your lordships know the course in other courts is to give our evidence intire.

Sir *J. Jekyll.* My lords, the indulgence of the managers, to let the Doctor's counsel go into this evidence, is very great; (for I believe such sort of evidence was never known before in any court of justice whatsoever;) but surely, as they have called this witness, for so I may term the book they were reading, we may be at liberty to cross-examine that witness; perhaps the place we desire to have read, may explain the passages read by them.

Mr. *Phipps.* My lords, we submit to it.

Gen. *Stanhope.* Pray, what edition is that book?—*Clerk.* It is printed in 1705.

Gen. *Stanhope.* My lords, if we should be mistaken in the edition, I hope we shall not be hindered in our reply from reading those passages in the edition which I have consulted.

Clerk reads.] "Again, on whom the same is bestowed at men's discretions, they likewise do hold it by divine right. If God in his revealed word hath appointed such power to be, although himself extraordinarily bestow it not, but leave the appointment of persons to men; yea, albeit God do neither appoint nor assign the person; nevertheless when men have assigned and established both, who doth doubt but that sundry duties and affairs depending thereupon, are prescribed by the word of God, and consequently by that very right to be exerted? For example sake, the power which Roman emperors had over foreign provinces, was not a thing which the law of God did ever.

institute; neither was Tiberius Cæsar by especial commission from heaven therewith invested; and yet payment of tribute unto Cæsar, being now made emperor, is the plain law of Jesus Christ unto kings by human right; honour by very divine right is due. Man's ordinances are many times proposed as grounds in the statutes of God. And therefore, of what kind soever the means be whereby governors are lawfully advanced to their states, as we by the laws of God stand bound meekly to acknowledge them for God's lieutenants, and do confess their power his; so by the same law they are both authorized and required to use that power, as far as it may be in any state available to his honour. The law appointeth no man to be a husband; but if a man hath betaken himself unto that condition, it giveth him power and authority over his own wife. That the Christian world should be ordered by the kingly regiment, the law of God doth not any where command; and yet the law of God doth give them, which once are exalted unto that place of estate, right to exact at the hands of their subjects general obedience in whatsoever affairs their power may serve to command; and God doth ratify works of that sovereign authority, which kings have received by men. This is therefore the right whereby kings do hold their power; but yet in what sort the same doth rest and abide in them, it somewhat behoveth farther to search; where, that we be not enforced to make over large discourses about the different conditions of sovereign or supreme power, that which we speak of kings shall be in respect of the state, and according to the nature of this kingdom, where the people are in no subjection, but such as willingly themselves have condescended unto for their own most behoof and security. In kingdoms therefore of this quality, the highest governor hath indeed universal dominion, but with dependency upon that whole intire body, over the several parts whereof he hath dominion; so that it standeth for an axiom in this case, the king is 'Major singulus, universis minor.' The king's dependency we do not construe as some have done, we are of opinion, that no man's birth can make him a king; but every particular person advanced to such authority hath, at his entrance into his reign, the same bestowed on him as an estate, in condition, by the voluntary deed of the people, in whom it doth lie, to put by any one, and to prefer some other before him better liked of, or judged fitter for the place; and that the party so rejected hath no injury done unto him; no, although the same be done in a place where the crown doth go διὰ γένους by succession, and to a person which is capital, and hath apparently, if blood be respected, the nearest right. They plainly affirm, in all well appointed kingdoms, the custom evermore hath been, and is, that children succeed not their parents until the people, after a sort, have created them a-new; neither that they grow to their fathers as natural and proper heirs, but are then to be reckoned for kings, when at the hands of such as represent the king's majesty, they have by sceptre and a diadem received, as it were, the investiture of a kingly power: their very words are, 'That where such power is settled into a family or kindred, the stock itself is thereby chosen, but not the twig that springeth of it. The next of the stock unto him that reigneth, are not through nearness of blood made kings; but rather set forth to stand for the kingdom: where regal dominion is hereditary, it is notwithstanding (if we look to the persons which have it) altogether elective.' To this purpose are selected heaps of scriptures concerning the solemn coronation or inauguration of Saul, David, of Solomon, and others, by the nobles, ancients, and people of the commonwealth of Israel: as if these solemnities were a kind of deed, whereby the right of dominion is given; which strange, untrue, and unnatural conceits, set abroad by seedsmen of rebellion, only to animate unquiet spirits, and to feed them with possibility of aspiring to thrones, if they can win the hearts of the people, what hereditary title soever any other before them may have; I say, unjust and insolent positions, I would not mention, were it not thereby to make the countenance of truth more orient; for unless we will openly proclaim defiance unto all law, equity and reason, we must (there is no remedy) acknowledge, that in kingdoms, hereditary birth gives right unto sovereign dominion; and the death of the predecessor puts the successor by blood in seisin. Those public solemnities before specified, do but serve for an open testification of the inheritor's right, or belonging unto the form of inducting him into possession of that thing he hath right unto. Therefore, in case it doth happen, that without right of blood, a man in such wise be possessed, all these new elections and investings are utterly void; they make him no indefeasible estate, the inheritor by blood may dispossess him as an usurper. The case thus standing, albeit we judge it a thing most true, that kings, even inheritors, do hold their right in the power of dominion, with dependency upon the whole body politic over which they have rule as kings; yet so it may not be understood, as if such dependency did grow; for that every supreme government doth personally take from thence his power, by way of gift, bestowed of their own free accord upon him at the time of his entrance into the said place of his sovereign government. But the case of dependency is that first original conveyance when power was derived from the whole into one; to pass from him unto them, whom out of him, nature, by lawful births, should produce, and no natural or legal inability make uncapable. 'Neither can any man with reason think, but that the first institution of kings is a sufficient consideration; wherefore their power should always depend on that from which it always flows: by original influence of power from the body unto the

king, is the cause of king's dependency in power upon the body.' By dependency we mean subordination and subjection; a manifest token of which dependency may be this: as there is no more certain argument that lands are held under any as lords, than if we see that such lands, in defect of heirs, fall unto them by escheat: in like manner, it doth follow rightly, that seeing dominion, when there is none to inherit it, it returneth into the body; therefore they which before were inheritors thereof, did hold it with dependency upon the body: so that by comparing the body with the head, as touching power, it seemeth always to reside in both; fundamentally and radically in the one, in the other derivatively, in one the habit, in the other the art of power. May a body politic then at all times, withdraw in whole or in part, the influence of dominion, which passeth from it, if inconveniencies do grow thereby? It must be presumed, that supreme governors will not in such case oppose themselves, and be stiff in detaining that, the use whereof is with public detriment. But surely without their consent, I see not how the body by any just means should be able to help itself, saving when dominion doth escheat; such things, therefore, must be thought upon beforehand, that power may be limited ere it be granted; which is the next thing we are to consider." (Fol. 444.)

Mr. *Dodd.* We now produce bishop Andrews's Sermons.

Clerk reads.] "To deprive or depose them? Sure where the worst is reckoned that can be of them, 'Clamabunt ad Dominum' is all I find, 1 Sam. viii. 18. No *per* to do it but he. By him, and by none but by him, they be; by him, and by none but by him, they cease to be." (London edition, fol. 1632, p. 939.)

Mr. *Phipps.* We desire to read another passage out of Mr. Hooker, in a Treatise of Church government.

Clerk reads.] "A Treatise of Church government: To which is added a Treatise of the Regal Power, and of the novelty of the doctrine of Resistance, published by Dr. Bernard in his Clavi Trabales."

Lord Chancellor. This is a collection of the works of several persons; so that it does not appear whose works these are that you are reading.

Mr. *Phipps.* That which we offer to be read is Mr. Hooker's, and is left out of the book which was printed before.

Clerk reads.] "There is a supreme head of justice whereunto all are subject, but itself in subjection to none; which kind of pre-eminence, if some ought to have in a kingdom, who but the king shall have it? Kings therefore no man can have lawful power and authority to judge; if private men offend, there is the magistrate over them which judgeth; if magistrates, they have their prince; if princes, there is heaven, a tribunal before which they shall appear; on earth they are not accountable to any." (Lon. edit. 1601. 4to. p. 49, 50.)

Mr. *Phipps.* My lords, we offer Doctor Jackson's, and bishop Usher's opinion in this matter. And first Doctor Jackson.

Clerk reads.] "He that is a king or supreme magistrate, by just and lawful title, may not be thus resisted, albeit he exercise his power tyrannically." (Tom. 3, pag. 965.)

Mr. *Phipps.* The next is archbishop Usher, in a treatise called, The Power communicated by God to the Prince, and the Obedience required of the Subject, &c.

Clerk reads.] "But if men's hands be thus tied (will some say) no man's state can be secure: Nay, the whole frame of the commonwealth would be in danger to be subverted and utterly ruined by the unbridled lust of a distempered governor. (Pag. 157, Lon. 1683. 8vo.)

"I answer, God's Word is clear in the point, 'Whosoever resisteth the power, resisteth the 'ordinance of God, and they that resist, shall 'receive to themselves damnation;' and thereby a necessity is imposed upon us, of being subject even for conscience sake, which may not be avoided by the pretext of any ensuing mischief whatsoever."

Mr. *Phipps.* My lords, we offer next the authority of Mr. Chillingworth, and we need say no more of him, than to mention that it is Mr. Chillingworth; and his character is so established by the lord Clarendon, that we need say no more of it.

Clerk reads.] "They that make no scruple at all of fighting with his sacred majesty, and shooting muskets and ordnance at him (which sure have not the skill to chuse a subject from a king) to the extreme hazard of his sacred person, whom by all possible obligations they are bound to defend, do they know, think you, the general rule without exception or limitation left by the Holy Ghost for our direction in all such cases, 'Who can lift up his hand against 'the Lord's anointed, and be innocent?' 1 Sam. xxvi. 9. Or do they consider his command in the Proverbs of Solomon, 'My son, fear God 'and the king, and meddle not with them that 'desire change?' Prov. xxiv. 21. Or his 'counsel in the book of Ecclesiastes, 'I counsel 'thee to keep the king's commandment, and 'that in regard of the oath of God?' Eccles. viii. 2. Or because they possibly may pretend that they are exempted from, or unconcerned in the commands of Obedience delivered in the Old Testament: Do they know and remember the precept given to all Christians by St. Peter, 'Submit yourselves to every ordinance of man 'for the Lord's sake, whether it be to the king 'as supreme, or unto governors, as unto them 'that are sent by him?' Or that terrible sanction of the same command, 'They that resist 'shall receive to themselves damnation,' left us by St. Paul in his epistle to the Romans, who then were the miserable subjects of the worst king, the worst man, nay, I think, I may add truly, the worst beast in the world; that so all rebels mouths might be stopt for ever, and left without all colour or pretence whatsoever to

justify the Resistance of sovereign power?" (Fol. 330. Lond. 1704. Folio)

Mr. *Phipps.* My lords, the next we offer is archbishop Bramhall, sometime bishop of Armagh.

Clerk reads.] "The same oath binds us to defend him against all conspiracies and attempts whatsoever, which shall be made against his person or crown; to defend him, much more therefore not to offend him, against all conspiracies and attempts whatsoever. That oath which binds us to defend him against all attempts whatsoever, presupposeth that no attempt against him can be justified by law, whether these attempts be against his person or his crown." (Page 581. Dubl. 1678. Folio.)

Clerk reads.] "If a sovereign shall persecute his subjects for not doing his unjust commands, yet it is not lawful to resist by raising arms against him: 'They that resist shall receive 'to themselves damnation.' But they ask, is there no limitation? I answer, 'Ubi Lex non 'distinguit, nec nos distinguere debemus.' How shall we limit where God hath not limited, or distinguish where he hath not distinguished?" (Ibid. fol. 542.)

Mr. *Dodd.* My lords, the next is bishop Sanderson.

Clerk reads.] "No conjuncture of circumstances whatsoever can make them expedient to be done at any time, that is, of itself and in the kind unlawful. For a man to blaspheme the holy name of God, to sacrifice to idols, to give wrong sentence in judgment, by his power to oppress those that are not able to withstand him, by subtilty to over-reach others in bargaining, to take up arms (offensive or defensive) against a lawful sovereign: None of these, and sundry other things of the like nature, being all of them simply, and *de toto genere*, unlawful, may be done by any man, at any time, in any case, upon any colour or pretension whatsoever; the express command of God himself only excepted, as in the case of Abraham for sacrificing his son. Not for the avoiding of scandal, not at the instance of any friend, or command of any power upon earth; not for the maintenance of the lives or liberties either of ourselves or others; nor for the defence of religion; nor for the preservation of a Church or State; no, nor yet, if that could be imagined possible, for the salvation of a soul; no, not for the redemption of the whole world." (Fol. 522.)

Mr. *Phipps.* My lords, Doctor Sacheverell being educated in the University of Oxford, we offer the Decrees of that University touching this matter. They were published in the Gazette the 26th of July, 1683, by authority.

Clerk reads.] Numb. 1845.

The London Gazette. Published by authority. From Monday July 23, to Thursday July 26, 1683.

"Whitehall, July 24. This day was presented to his majesty the following Judgment and Decree of the University of Oxford, passed in their convocation, on Saturday the 21st inst.

"The Judgment and Decree of the University of Oxford, passed in their convocation, July 21, 1683, against certain pernicious books, and damnable doctrines, destructive to the sacred persons of princes, their state and government, and of all human society.

"Although the barbarous assassination lately enterprized against the person of his sacred majesty, and his royal brother, engage all our thoughts to reflect with utmost detestation and abhorrence on that execrable villainy, hateful to God and man; and pay our due acknowledgments to the divine Providence, which by extraordinary methods brought it to pass, that the breath of our nostrils, the anointed of the Lord, is not taken in the pit which was prepared for him; and that under his shadow we continue to live, and enjoy the blessings of his government; yet notwithstanding we find it to be a necessary duty at this time to search into, and lay open those impious doctrines, which having of late been studiously disseminated, gave rise and growth to these nefarious attempts, and pass upon them our solemn public censure and decree of condemnation.

"Therefore, to the honour of the holy and undivided Trinity, the preservation of Catholic truth in the Church, and that the king's majesty may be secured both from the attempts of open bloody enemies, and machinations of treacherous heretics and schismatics; we the vice-chancellor, doctors, proctors, and masters, regent and not regent, met in convocation in the accustomed manner, time and place, on Saturday the 21st day of July, in the year 1683, concerning certain Propositions contained in divers books and writings, published in the English, and also the Latin tongue, repugnant to the holy Scriptures, decrees of councils, writings of the fathers, the faith and profession of the primitive Church; and also destructive of the kingly government, the safety of his majesty's person, the public peace, the laws of nature, and bonds of human society, by our unanimous assent and consent, have decreed and determined in manner and form following:

The First Proposition.

"All civil authority is derived originally from the people."

The Second.

"There is a mutual compact, tacit or express, between a prince and his subjects, and that if he perform not his duty, they are discharged from theirs."

The Third.

"That if lawful governors become tyrants, or govern otherwise than by the laws of God and man they ought to do, they forfeit the right they had unto their government." Lex Rex. Buchanan de Jure Regni. Vindiciæ contra Tyrannos Bellarmine de Consiliis. De Pontificie. Milton. Goodwin. Baxter. H. C.

The Fourth.

"The sovereignty of England is in the three estates, viz. King, Lords and Commons. The king has but a co-ordinate power, and may be over-ruled by the other two." Lex Rex. Hun-

tion of a limited and mixed monarchy. Baxter H. C. Polit. Catechis.

The Fifth.

"Birth-right and proximity of blood give no title to rule or government; and it is lawful to preclude the next heir from his right and succession to the crown." Lex Rex. Hunt's Postscript. Doleman's History of Succession. Julian the Apostate. Mene Tekel.

The Sixth.

"It is lawful for subjects, without the consent, and against the command of the supreme magistrate, to enter into leagues, covenants and associations, for defence of themselves and their religion." Solemn League and Covenant. Late Association.

The Seventh.

"Self-preservation is the fundamental law of nature, and supersedes the obligation of all others, whensoever they stand in competition with it." Hobbs de Cive Leviathan.

The Eighth.

"The doctrine of the Gospel concerning patient suffering of injuries, is not inconsistent with violent resisting of the higher powers, in case of persecution for religion." Lex Rex. Julian Apostate. Apolog. Relat.

The Ninth.

"There lies no obligation upon Christians to Passive Obedience, when the prince commands any thing against the laws of our country; and the primitive Christians rather chose to die than resist, because Christianity was not settled by the laws of the empire." Julian Apostate.

The Tenth.

"Possession and strength give a right to govern; and success in a cause or enterprize, proclaims it to be lawful and just. To pursue it, is to comply with the will of God, because it is to follow the conduct of his Providence." Hobbs. Owen's Sermon before the Regicides, Jan. 31, 1648. Baxter. Jenkins's Petition, Oct. 1651.

The Eleventh.

"In the state of nature there is no difference between good and evil, right and wrong. The state of nature is a state of war, in which every man hath a right to all things."

The Twelfth.

"The foundation of civil authority is this natural right, which is not given, but left to the supreme magistrate upon men's entering into societies; and not only a foreign invader, but a domestic rebel, puts himself again into a state of nature, to be proceeded against, not as a subject, but an enemy; and consequently, acquires by his rebellion the same right over the life of his prince, as the prince (for the most heinous crimes) has over the life of his own subjects."

The Thirteenth.

"Every man, after his entering into a society, retains a right of defending himself against force, and cannot transfer that right to the commonwealth, when he consents to that union whereby a commonwealth is made: and in case a great many men together have already resisted the commonwealth, for which every one of them expecteth death; they have liberty then to join together, to assist and defend one another. Their bearing of arms, subsequent to the first breach of their duty, though it be to maintain what they have done, is no new unjust act; and if it be only to defend their persons, is not unjust at all."

The Fourteenth.

"An oath superadds no obligation to pact, and a pact obliges no farther than it is credited; and consequently, if a prince gives any indication that he does not believe the promises of fealty and allegiance made by any of his subjects, they are thereby free from their subjection; and notwithstanding their pacts and oaths, may lawfully rebel against, and destroy their sovereign." Hobbs de Cive Leviathan.

The Fifteenth.

"If a people, that by oath and duty are obliged to a sovereign, shall sinfully dispossess him, and (contrary to their covenants) chuse and covenant with another; they may be obliged by their later covenants, notwithstanding their former." Baxter. H. C.

The Sixteenth.

"All oaths are unlawful, and contrary to the word of God." Quakers.

The Seventeenth.

"An oath obligeth not in the sense of the imposer, but the takers." Sheriffs Case.

The Eighteenth.

"Dominion is founded in grace."

The Nineteenth.

"The powers of this world are usurpations upon the prerogative of Jesus Christ; and it is the duty of God's people to destroy them, in order to the setting Christ upon his throne." Fifth Monarchy-Men.

The Twentieth.

"The Presbyterian government is the sceptre of Christ's kingdom, to which kings as well as others are bound to submit; and the king's supremacy in ecclesiastical affairs, asserted by the Church of England, is injurious to Christ, the sole king and head of his Church." Altare Damascenum. Apolog. Relat. Hist. Indulg. Cartwright. Travers.

The Twenty-first.

"It is not lawful for superiors to impose any thing in the worship of God, that is not antecedently necessary."

The Twenty-second.

"The duty of not offending a weak brother, is inconsistent with all human authority of making laws concerning indifferent things." Protestant Reconciler.

The Twenty-third.

"Wicked kings and tyrants ought to be put to death; and if the judges and inferior magistrates will not do their office, the power of the sword devolves to the people: if the major part of the people refuse to exercise this power, then the ministers may excommunicate such a king; after which it is lawful for any of the

subjects to kill him, as the people did Athaliah and Jehu." Jezebel. Buchanan. Knox. Goodman. Gilby. Jesuits.

The Twenty-fourth.

"After the sealing of the Scripture canon, the people of God in all ages are to expect new revelations for a rule of their actions; and it is lawful for a private man, having an inward motion from God, to kill a tyrant." Quakers and other Enthusiasts. Goodman.

The Twenty-fifth.

"The example of Phineas is to us instead of a command; for what God hath commanded or approved in one age, must needs oblige in all." Goodman. Knox. Napthali.

The Twenty-sixth.

"King Charles the first was lawfully put to death, and his murderers were the blessed instruments of God's glory in their generation." Milton. Goodwin. Owen.

The Twenty-seventh.

"King Charles the first made war upon his parliament; and in such a case the king may not only be resisted, but he ceaseth to be king." Baxter.

"We decree, judge, and declare all and every of these propositions to be false, seditious, and impious, and most of them to be also heretical and blasphemous, infamous to Christian religion, and destructive of all government in Church and State.

"We farther decree, that the books which contain the aforesaid Propositions and impious doctrines, are fitted to deprave good manners, corrupt the minds of unwary men, stir up seditions and tumults, overthrow states and kingdoms, and lead to rebellion, murder of princes, and Atheism itself: and therefore we interdict all members of the University from the reading of the said books, under the penalties in the statutes expressed. We also order the said recited books to be publicly burnt by the hand of our marshal, in the court of our schools.

"Likewise we order, that in perpetual memory hereof, these our decrees shall be entered in the registry of our convocation; and that copies of them being communicated to the several colleges and halls within this University, they be there publicly affixed in the libraries, refectories, or other fit places, where they may be seen and read of all.

"Lastly, we command, and strictly injoin, all and singular the readers, tutors, catechists, and others to whom the care and trust of institution of youth is committed, that they diligently instruct and ground their scholars in that most necessary doctrine, which in a manner is the badge and character of the Church of England; of submitting to every ordinance of man for the Lord's sake; whether it be to the king as supreme, or unto governors as unto them that are sent by him, for the punishment of evil doers, and for the praise of them that do well. Teaching that this submission and obedience is to be clear, absolute, and without exception of any state or order of men. Also that they, according to the apostle's precept, exhort, that first of all, supplications, prayers, intercessions, and giving of thanks be made for all men, for the king and all that are in authority; that we may lead a quiet and peaceable life, in all godliness and honesty; for this is good and acceptable in the sight of God our Saviour. And in especial manner, that they press and oblige them humbly to offer their most ardent and daily prayers at the throne of grace, for the preservation of our sovereign lord king Charles from the attempts of open violence, and secret machinations of perfidious traitors; that the defender of the faith, being safe under the defence of the Most High, may continue his reign on earth, till he exchange it for that of a late and happy immortality."

Mr. *Phipps.* My lords, to shew that this was likewise at the same time archbishop Tillotson's opinion, we desire to read his Letter which he wrote to my lord Russel, when he was under his condemnation in Newgate, July 20, 1683.

[Here the clerk read the Letter, see it in Vol. 9, p. 813, of this Collection.*]

Mr. *Phipps.* My lords, we next offer the opinion of bishop Stillingfleet.

Clerk reads. "A Vindication of the Answer to some late Papers, concerning the Unity and Authority of the Catholic Church, and the Reformation of the Church of England.

"But it hath been said by somebody, That we had our government and ceremonies from his Church, our doctrine from Luther and Calvin; and that we had nothing peculiar to our Church, but our doctrine of Non Resistance, and much good may it do us; and we hope we shall never fare the worse for it. This might give occasion to enquire, whether the Church, which pretends to be infallible, doth teach it so orthodoxly, or not? Or whether those who do think themselves obliged to believe what she teaches, are thereby obliged to the strictest principles of loyalty? But I forbear. It is sufficient to my purpose, to shew that our Church doth not only teach them, as her own doctrine, but (which is far more effectual) as the doctrine of Christ and his Apostles, and of the primitive Church." (Page 89. Lond. 1687.)

Mr. *Phipps.* My lords, the same Bishop, in a Discourse of the Unreasonableness of a new Separation, takes notice of some objections made by those who are friends to the government, as if Non Resistance were not consistent with the Revolution.

Lord Chancellor. There is no name of an author to these books which you now produce.

Mr. *Dodd.* The book is generally known by

* A very able writer has observed, that it is difficult to acquit Tillotson, and impossible to acquit Burnet, of gross prevarication on the question of Resistance.—Edinburgh Review, Vol. 19, p. 445. See in this Collection, vol. 8, p. 1016, bishop Morley's suggestion to king James, as to the practical application by the clergy of the Church of England of the doctrine of Non Resistance.

all learned men to be bishop Stillingfleet's. Mr. Chiswell, who printed it, attended here three days to prove it, but is ill now; but he has left a certificate that he printed it, and all learned men know it to be his.

Clerk reads.] "I come to the particular examination of the difficulties which relate to the present oaths [to king William and queen Mary]; and because we are charged with apostacy from the principles of the Church of England, and that is made the main ground of the designed separation, I would fain know what this charge is built upon, with respect to the oaths, for that is all we are concerned in. If any particular persons have advanced new hypothesis of government, contrary to the sense of our Church, let them answer for themselves. The case of the oath is quite of another nature; here is no renouncing the doctrine of Passive Obedience, or asserting the lawfulness of Resistance." (Page 8, Lond. 1689.)

Mr. *Phipps.* Your lordships observe, that since the Revolution, that general doctrine of Obedience is asserted by him.

Mr. *Dodd.* My lords, the next we offer is Dr. Sherlock in his Case of Allegiance stated.

Clerk reads.] "And bishop Overall's Convocation-Book, which is lately published, the principal design of which is to assert the irresistible authority of sovereign princes, does as plainly assert this too, that all settled governments, whatever their beginnings were, have God's authority, and must be obeyed; of which more above: for those wise men who sat in that convocation, plainly saw the necessary connexion between Non-Resistance, and Obedience to the present powers; both which were equally resolved into the authority of God, in removing kings and setting up kings: so that Obedience and Allegiance to the present powers, when they are once well settled among us, is so far from being a renouncing of the doctrine of Non-Resistance and Passive Obedience, that those who refuse to comply, must renounce the only principle whereon that doctrine is reasonably founded, and consequently renounce the doctrine itself." (Page 37, Lond. 1691, quarto.)

Mr. *Phipps.* My lords, we now offer a book published by the late bishop Beveridge, which was published by her majesty's licence, countersigned by the earl of Sunderland.

Clerk reads.]—"Anne R. Whereas our trusty and well-beloved Richard Smith, of our city of London, bookseller, hath humbly represented unto us, that he has with great labour and expence, prepared for the press, a new edition of the sermons and other works written in English by the right reverend father in God, Dr. William Beveridge, bishop of St. Asaph, deceased: and has therefore humbly besought us to grant him our royal privilege of licence for the sole printing and publishing thereof, for the term of 14 years: we being willing to give all due encouragement to works of this nature, tending to the advancement of piety and learning, are graciously pleased to condescend to his request; and do therefore, by these presents, grant to him the said Richard Smith, his executors, administrators, and assigns, our royal licence for the sole printing and publishing the English works of the said late bishop of St. Asaph for the term of 14 years, from the date hereof; strictly forbidding all our subjects, within our kingdoms and dominions, to reprint the same, either in whole or in part, or to import, buy, vend, utter, or distribute any copies thereof reprinted beyond seas, during the aforesaid term of 14 years, without the consent and approbation of the said Richard Smith, his heirs, executors, and assigns, under his, or their hands and seals first had and obtained, as they will answer the contrary at their peril; whereof the master, wardens and company of stationers are to take notice, that the same may be entered in their register, and that due obedience be rendered thereunto. Given at our court at Kensington, the 5th day of June 1708, in the 7th year of our reign.

"By her Majesty's Command,

"Sunderland."

"Private Thoughts upon Religion, digested into twelve Articles, with practical Resolutions formed thereupon. By the Right Rev. Father in God, William Beveridge, D. D. late Lord Bishop of St. Asaph.

Resolution I.

"I am resolved, by the grace of God, to honour and obey the king, or prince, whom God is pleased to set over me; as well as to expect he should safe-guard and protect me, whom God is pleased to set under him. (Page 251, 252, 253, 254, Lond. 1709, 8vo.)

"The King of kings, and Lord of lords, the great and glorious Monarch of all the world, having enacted many gracious laws, is pleased to set over every kingdom and nation such persons as may put them in execution: so that I cannot but look upon a lawful king as truly a representative of the most high God, as a parliament is of the people. And am therefore persuaded, that whosoever rebels against him, rebels against God himself; not only in that he rebels against the ordinance of God, and so against the God of that ordinance; but because he rebels against him whom God hath set up as his vicegerent, to represent his person and execute his laws, in such a part of his dominions.

"Hence it is, that these two precepts, 'Fear 'God, and honour the king,' are so often joined together in holy writ; for he that fears God's power, cannot but honour his authority; and he that honours not the king that represents God, cannot be said to fear God, who is represented by him. And hence likewise it is, that God hath been as strict and express in enjoining us obedience to our governors, as to himself: for, thus saith the Lord of Hosts, Rom. xiii. 1, 'Let every soul be subject to the 'higher powers.' Why? Because there is no power but of God; the powers that be, are ordained of God.

"And he hath denounced as great a judgment against such as rebel against the magistrate he hath ordained, as against those that rebel against himself: for, 'Whosoever resisteth 'the power, resisteth the ordinance of God; 'and they that resist shall receive to themselves 'damnation,' ver. 2. So that the wrath of God shall as certainly fall upon those that rise up against the king, as upon those that fight against God. And no wonder, that the punishment should be the same, when the fault is the same. For he that fights against the king, fights against God himself, who hath invested him with that power and authority to govern his people, representing his own glorious majesty before them.

"Upon this ground it is, that I believe the wickedness of a prince cannot be a sufficient plea for the disobedience of his subjects; for it is not the holiness, but the authority of God that he represents, which the most wicked, as well as the most holy person may be endowed with. And therefore when the Gospel first began to spread itself over the earth, though there was no Christian king, or supreme magistrate, of what title soever, to cherish and protect it; nay, though the civil powers were then the greatest enemies to it, yet, even then, were the disciples of Christ enjoined to submit themselves to every ordinance of man, for the Lord's sake.

"Insomuch, that did I live among the Turks, I should look upon it as my duty to obey the grand signior in all his lawful edicts, as well as the most Christian and pious king in the world. For, suppose a prince be never so wicked, and never so negligent in his duty of protecting me, it doth not follow, that I must neglect mine of obeying him. In such a case, I have another duty added to this, and that is, to pray for him, and to intercede with God for his conversion: for, thus hath the King of Kings commanded, That 'prayers, supplications, intercessions, 'and giving of thanks be made as for all men, 'so more especially for kings, and those that 'are in authority, that we may live a quiet and 'peaceable life, in all godliness and honesty.' 1 Tim. ii. 1, 2. So that whensoever I address to the court of heaven, I must be sure to remember my sovereign on earth, as himself doth in heaven, in righteousness and mercy. But especially, in case of any seeming or real default or defect; though I do not think it a subject's duty to judge or censure his sovereign's actions: I am to be the more earnest in my prayers and intercessions for him; but upon no account to fight and rebel against him."

Mr. *Dodd.* My lords, the next book we offer is his grace the archbishop of Canterbury's treatise, entitled, The Creed of Mr. Hobbs examined.

Clerk reads.] "There is no tie so strong as that of religion, which eternally bindeth a conscientious subject in allegiance to his sovereign." (Pag. 158. Lond. 1670.)

"Woe to all the princes upon the earth, if this doctrine be true, and becometh popular. If the multitude believe this, the prince not armed with the scales of the Leviathan, that is, with irresistible power, can never be safe from the spears, and barbed irons, which their ambition and presumed interest will provide, and their malice will sharpen, and their passionate violence throw against him. If the beast we spoke of come but to know its own strength, it will never be managed. Wherefore such as own these pernicious doctrines, destructive to all societies of men, may be said to have wolves' heads, as the laws of old were wont to speak concerning excommunicated persons; and are like those ravenous beasts, so far from deserving our love and care, that they ought to be destroyed at the common charge." (Ibid. p. 160, 161.)

Mr. *Phipps.* My lords, there is a farther account of the opinion of the same archbishop of Canterbury, in a printed paper, entitled, An Account of what passed at the Execution of the late Duke of Monmouth, on Wednesday the 15th of July, 1685, on Tower-hill.

Clerk reads.] "The late duke of Monmouth came from the Tower to the scaffold, attended by the bishop of Ely, the bishop of Bath and Wells, Dr. Tennison and Dr. Hooper; which four the king was graciously pleased to send him, as his assistants to prepare him for death; and the late duke himself intreated all four of them to accompany him to the place of execution, and to continue with him to the last. The two bishops going in the lieutenant's coach with him to the bars, made seasonable and devout applications to him all the way; and one of them desired him not to be surprized, if they to the very last, upon the scaffold, renewed those exhortations to a particular repentance, which they had so often repeated before.

"At his first coming upon the scaffold, he looked for the executioner; and seeing him, said, Is this the man to do the business? Do your work well.

"Then the late duke of Monmouth began to speak, some one or other of the assistants, during the whole time, applying themselves to him.

"*Mon.* I shall say but very little; I come to die; I die a Protestant of the Church of England.

"*Assist.* My lord, if you be of the Church of England, you must acknowledge the doctrine of Non-Resistance to be true.

"*Mon.* If I acknowledge the doctrine of the Church of England in general, that includes all.

"*Assist.* Sir, it is fit to own that doctrine particularly, with respect to your case. [Here he was much urged about that doctrine of Non-Resistance; but he repeated in effect his first answer.]

"*Assist.* My lord, it is fit to be particular; and considering the public evil you have done, you ought to do as much good now as possibly you can, by a public acknowledgment.

"*Mon.* What I have thought fit to say of public affairs, is in a paper which I have signed; I refer to my paper.

"*Assist.* My lord, there is nothing in that paper about Resistance, and you ought to be particular in your repentance, and to have it well grounded. God give you true repentance.

"*Mon.* I die very penitent, and die with great cheerfulness, for I know I shall go to God.

"*Assist.* My lord, you must go to God in his own way: Sir, be sure you be truly penitent, and ask forgiveness of God for the many you have wronged.

"*Mon.* I am sorry for every one I have wronged; I forgive every body; I have had many enemies, I forgive them all.

"*Assist.* Sir, your acknowledgment ought to be public and particular.

"*Mon.* I am to die; pray, my lord——I refer to my paper.

"*Assist.* They are but a few words that we desire: we only desire an answer to this point.

"*Mon.* I can bless God that he hath given me so much grace, that for these two years last past I have led a life unlike to my former course, and in which I have been happy.

"*Assist.* Sir, was there no ill in these two years? In these years these great evils have happened; and the giving public satisfaction is a necessary part of repentance; be pleased to own a detestation of your rebellion.

"*Mon.* I beg your lordships that you will stick to my paper.

"*Assist.* My lord, as I said before, there is nothing in your paper about the doctrine of Non-Resistance.

"*Mon.* I repent of all things that a true Christian ought to repent of. I am to die; pray, my lord——

"*Assist.* Then, my lord, we can only recommend you to the mercy of God; but we cannot pray with that cheerfulness and encouragement as we should, if you had made a particular acknowledgment.

"This is a true account, witness our hands, Francis Ely, Thomas Bath and Wells, Thomas Tennison, George Hooper. William Gostlin, Peter Vandeput, sheriffs."

Mr. *Phipps.* My lords, we pray we may read the Sermon of his grace the present archbishop of York, preached before your lordships on the 30th of January, 1700.

Clerk reads.] "And in case it ever happen that we cannot with a safe conscience obey, there we are patiently to suffer the penalties of our disobedience; but by no means either to affront their persons, or to disturb their government, by raising or partaking in any tumult, or insurrection, or rebellion. (Page 13.)

"That there is such a submission due from all subjects to the supreme authority of the place where they live, as shall tie up their hands from opposing or resisting it by force, is evident from the very nature and ends of political society. And, I dare say, there is not that country upon earth, let the form of their government be what it will (absolute monarchy, legal monarchy, aristocracy, or commonwealth), where this is not a part of the constitution. Subjects must obey passively, where they cannot obey actively: otherwise the government would be precarious, and the public peace at the mercy of every male-content, and a door would be set open to all the insurrections, rebellions and treasons in the world. Nor is this only a state-doctrine, but the doctrine also of Jesus Christ, and that a necessary, indispensible one too, as sufficiently appears from those famous words of St. Paul, Rom. xiii. 1, 2, which are so plain that they need no comment: 'Let every soul, (saith he) be subject to the higher powers, for there is no power but of God, and the powers that be, are ordained of God; whosoever therefore resisteth the power, resisteth the ordinance of God; and they that resist shall receive to themselves damnation.' So that, so long as this text stands in our Bible, the doctrine of Non-Resistance and Passive Obedience must be of obligation to all Christians." (Ibid. p. 19, 20.)

Mr. *Dodd.* Pray, see whether there is any thing purporting the Thanks of the House to be given to the archbishop for his Sermon.

Clerk reads.] "Die Jovis, 1 Februarii, 1700. It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Thanks of this House be and are hereby given to his grace the lord archbishop of York, for his Sermon preached before this House the 30th of January last; and he is hereby desired to print and publish the same.

"MATTH. JOHNSON, Cl' Parliamentor."

Mr. *Walpole.* My lords, I presume the counsel have offered all they think proper to offer out of this Sermon: but that your lordships may have a specimen of the candour of the Doctor's quotations, I pray the clerk may read the two next paragraphs of that Sermon, and that he may read them as distinctly as he did the others.

Clerk reads.] "But then after I have said this, care must be taken, that this general doctrine be not misapplied in particular countries. Though Non-Resistance, or Passive Obedience, be a duty to all subjects, and under all governments; yet it is not expressed the same way in all places, but both the objects and the instances of it do vary in different nations, according to the different models of their government.

"To speak this as plainly as I can: as the laws of the land are the measures of our active obedience, so are also the same laws the measures of our submission; and as we are not bound to obey, but where the laws and constitution require our obedience, so neither are we bound to submit, but as the laws and constitution do require our submission." (Fol. 20.)

Mr. *Walpole.* Before we part with that Sermon, I desire one paragraph more may be read; it begins with these words, 'If indeed a preacher.'

Clerk reads.] "If indeed a preacher should in the pulpit presume to give his judgment

about the management of public affairs, or to lay down doctrines as from Christ about the forms and models of kingdoms or commonwealths, or to adjust the limits of the prerogative of the prince, or of the liberties of the subject in our present government; I say, if a divine should meddle with such matters as these in his sermons, I do not know how he can be excused from the just censure of meddling with things that nothing concern him: this is indeed a practising in state matters, and is usurping an office that belongs to another profession, and to men of another character; and I should account it every whit as indecent in a clergyman to take upon him to deal in these points, as it would be for him to determine titles of land in the pulpit, which are in dispute in Westminster Hall." (Fol. 6.)

Mr. *Phipps.* My lords, if your lordships please, as to the two paragraphs read next after what we read, we entirely concur in what is laid down in them; and if we shew that this doctrine is agreeable to the laws of the land, then it is agreeable to what is there laid down; as to the other part, if he has taken upon him to treat of the model of government, he will be under the censure of the archbishop; but we desire to read a little before the beginning of that paragraph.

Clerk reads.] "Titus iii. 1. 'Put them in 'mind to be subject to principalities and powers, 'to obey magistrates.'

"You all know what kind of argument this day calls for: for by the design of keeping it, the business that the preacher hath to do, is to press obedience and subjection to the government we live under; and to preach against faction and rebellion; and accordingly it is prescribed in the rubric of this day's service, that if there be a sermon at all, and not a homily, it shall be upon this argument.

"It is very well that authority hath taken care that at some solemn times we should preach upon this subject in a more solemn manner; because though it be as needful as any, yet there are some among us think it a very improper theme for the pulpit. I must confess I had an eye to this suggestion when I pitched upon these words which I have now read to you: because I think there is something to be observed in them which will effectually confute it.

"St. Paul here lays his charge upon Titus, that he should put the people that were under his care in mind, to be subject to principalities and powers, and to obey magistrates.

"Two things I would here consider, First, The person that is ordered thus to put the people in mind: and, Secondly, The thing that he is to put them in mind of, which is subjection and obedience to principalities, and powers, and magistrates.

"I begin with the first thing, the person to whom St. Paul writes this epistle, and to whom he gives it in charge, that he should put the people in mind to be subject.

"Who was this person? Why, it was Titus, an ecclesiastic, bishop, a preacher of the gospel, not a layman, not a magistrate, but a pure churchman. What can be more plainly gathered from hence than this, that it is not foreign to a clergyman's office to preach obedience and subjection to the government; but on the contrary a part of his function, a necessary duty incumbent upon him to do it; if any man affirm otherwise, he must either say that St. Paul did not rightly instruct Titus in his office, but enjoined him to do that which he had nothing to do with; or he must shew that the case of Titus was different from that of the ministers of the gospel at this day; neither of which things can, I believe, be easily made out.

"And yet into such times are we fallen, that it is taken ill by many, that ministers should in their pulpit-discourses meddle with these matters: I must confess, I think, that of all men it most concerns a minister of religion not to be a busy-body, or a meddler in other men's matters; for in truth he hath work enough to do of his own, and such kind of work too, as let him behave himself as inoffensively as he can, will create him difficulties and enemies enough. And therefore it would be very imprudent in him to usurp other men's provinces, and to burn his finger where he needs not, especially considering that the success of his labours and endeavours among the people doth in a great measure depend upon the good liking they have of him.

"But what is it that gives offence? Or what is it that renders this argument we are speaking of so improper a subject for a clergyman to treat of? Why, several things are pretended, and I shall name some of them.

"First, It is said, That the work of a clergyman is to instruct men in Christ's religion, to preach against vice and sin, and to preach up holiness and good life, and mutual love and charity; but what hath he to do with state-affairs, as matters of government are?

"I answer, he hath nothing indeed to do with them: but his only work is to make men good Christians, by endeavouring to possess them with a hearty belief of our Saviour's doctrines and promises, and persuading them to a conformity in their lives to his precepts. This is our proper work, and this is what we ought to attend to all the days of our life; and with government and state-affairs we ought not to meddle, in our sermons especially.

"But then, after all this, it doth not follow but that we are all bound, as we have occasion, to preach up loyalty and obedience to our governors; for this is no state-affair, but an affair of the gospel. We cannot instruct men in Christ's religion, without instructing them in this.

"If, indeed, it was an indifferent thing to a man's Christianity, or to his salvation, whether he was a good or a bad subject, then indeed it would be as indifferent to a preacher, whether he insisted on these things to the people; but it is not so.

"One great branch of Christian holiness, as it is declared in the New Testament, is, that

every man demean himself quietly and peaceably, and obedient to the government he lives under; and that not only for wrath, or fear of punishment, but also for conscience-sake: and this is made as necessary a condition of going to heaven, as any other particular virtue is. And therefore if we will instruct men in Christ's religion, and in the indispensible points of holiness required thereby, we must instruct them in this also.

"One great vice and damnable sin that the religion of our Lord has cautioned against, is the sin of factiousness and rebellion; and therefore, if it be our duty to declare against the sins and vices that are contrary to Christianity, it is our duty to declare and caution against this also.

"Lastly, We do readily grant, that a great part of our office consists in most affectionately recommending and pressing the necessity of mutual love and charity; but if this be necessary, is it not more so to recommend and press obedience to authority, without which mutual love and charity cannot possibly subsist? That being the common ligament of them; and take away that, we should be no better than bears and tygers one to another.

"But it is said in the second place, that preachers ought not to meddle with these points, because they are not competent judges of them: they do not know the measures and limits of loyalty and disloyalty, of being a good and a bad subject; these depending altogether upon the constitution of the government we live under, and the determining of them belongs to the civil courts, and not to their profession.

"To this I answer, that in all those instances wherein this argument falls under the cognizance and determination of parliament, or judges or lawyers, we do not pretend to meddle with it; and if any man do, let him answer for himself: all that we pretend to, is to press the plain, general indispensible duties of obedience to laws, and of peaceableness and subjection to the higher powers, which Christ and his Apostles have every where taught in the Bible."

Mr. *Phipps*. My lords, we do not desire to read any more; we think we have justified our quotations, and shewed, that it is the opinion of that great and learned archbishop, that the doctrine of Passive Obedience and Non-Resistance is the doctrine of our Church; and that it is a duty incumbent upon the clergy to preach it to the people.

Mr. *Dodd*. The next we offer to your lordships, is the opinion of the present bishop of Worcester, in a Sermon preached before the late queen, the 29th of May, 1692, when he was bishop of St. Asaph.

Clerk reads.] "They had brought things to that pass, that our laws signified nothing but what they pleased; our religion was held at the curtesy of them that were the bloody enemies of it. Our obedience was made use of as a perfect snare to us; we must not resist; that our religion would not allow.——It was God that infatuated our oppressors, to join the injuries of a people that could not lawfully resist, with those of a prince that could not lawfully pass them by without Resistance." (Page 18, 19.)

Mr. *Phipps*. We shall now offer to your lordships a Sermon preached by the bishop of Rochester before the Artillery-Company, upon the 29th of May, 1692.

Clerk reads.] "Put up thy sword, says he, O Peter! submit with patience. Oppose not authority. Do not then break the laws of thy country, though for kindness and love of me. Put up thy sword. He that uses the sword unlawfully, though on a pretence never so pious, shall perish by the sword; shall either be destroyed by it here, or punished hereafter by God himself for having so used it. (Page 5.)

"Wherefore we are not to conclude, that our blessed Lord, by this check given to St. Peter, did absolutely prohibit all manner of using the sword among Christians, but only that he taught us the great duty of Christian submission. For if St. Peter was, then certainly all other Christian subjects are, forbidden to unsheath the sword against their lawful sovereign, or his ministers, as they are commissioned by him, though they do it on a pretext so spiritual, as the cause of Christ himself.

"Though they could not be induced by fear or favour to rank their princes equal with their God, yet they preserved them in the next place: Though they would never worship them as gods upon earth, yet they religiously obeyed them as God's deputies and representatives. They judged those who rebelled against them worthy of death, as if they had actually rebelled against God himself. What else means St. Paul, when in so many words he declares, 'That whosoever resisteth the power resisteth 'the ordinance of God; and they that resist 'shall receive to themselves damnation?' Rom. xiii. 2. Out of all doubt he there speaks of the temporal power, and of eternal damnation to ensue upon resisting it; than which, what more grievous punishment could have been inflicted, had they immediately resisted God himself? (Page 25, 26.)

"And recollect, I intreat you, the time when this was so positively pronounced by St. Paul. It must have been writ under the reign of Claudius or Nero. So that it is evident, all that resisted them were, without repentance, in a damnable state. Can there be any colour so specious, any cause so just, in which, instead of damnation, a Christian subject may justly expect to receive to himself salvation, on the account of resisting?"

Mr. *Phipps*. We shall next offer to your lordships' consideration the authority of the lord bishop of Sarum; where he shews, that this is not only the doctrine of the Church of England, but of the Church of Scotland, and of all Christian Churches.

Clerk reads.] "A Vindication of the Authority, Constitution, and Laws of the Church and State of Scotland, &c. By Gilbert Burnet.

"But these words of St. Paul, being as at

first addressed to the Romans, so also designed by the Holy Ghost to be a part of the rule of all Christians, do prove, that whoever hath the supreme power, is to be submitted to, and never resisted. (Printed at Glasgow, 1673. Page 41, 42.)

"*Isot.* If you were not in too great a haste, you would not be so forward; consider therefore the reason St. Paul gives for submission to superior rulers, is, 'because they are the ministers of God for good.' If then they swerve from this, they forsake the end for which they are raised up, and so fall from their power and right to our obedience.

"*Bazil.* Truly what you have said makes me not repent of any haste I seemed to make; for what you have alleged proves indeed that the sovereign is a minister of God for good, so that he corrupts his power grossly when he pursues not that design: But in that he is only accountable to God, whose minister he is. And this must hold good, except you give us good ground to believe, that God hath given authority to the subjects to call him to account for his trust; but if that be not made appear, then he must be left to God, who did impower him, and therefore can only coerce him. As one having his power from a king, is accountable to none for the administration of it but to the king, or those on whom the king shall devolve it: So except it be proved, that God hath warranted subjects to call their sovereigns to account, they being his ministers, must only be answerable to him. And, according to these principles of yours, the magistrates authority shall be so enervated, that he shall no more be able to serve these designs for which God hath vested him with power: Every one being thus taught to shake off his yoke when they think he acts in prejudice of religion. And here I shall add one thing, which all casuists hold a safe rule in matters that are doubtful, that we ought to follow that side of the doubt which is freest of hazard. Here then damnation is at least the seeming hazard of Resistance; therefore except upon as clear evidence you prove the danger of absolute submission to be of the same nature that it may balance the other, then absolute submission, as being the securest, is to be followed."

Mr. *Phipps.* There is another Sermon preached by the bishop of Salisbury, intitled, "Subjection for Conscience-sake asserted, in a Sermon preached at Guildhall, 1689."

Clerk reads.] "Blessed be God, our Church hates and condemns this doctrine, from what hand soever it comes, and hath established the rights and authority of princes, on sure and unalterable foundations; injoining an intire obedience to all the lawful commands of authority, and an absolute submission to that supreme power God hath put into our sovereign's hands. This doctrine we justly glory in; and if any that had their baptism, and education in our Church, have turned renegades from this, they proved no less enemies to the Church herself, than to the civil authority: So that their apostacy leaves no blame on our Church, which glories in nothing more than a well-tempered reformation from the later corruption which the dark ages brought into the pure and primitive doctrines which our Saviour and his Apostles taught, and the first Christians retained, and practised for many ages." (Printed at London, page 30.)

Mr. *Phipps.* My lords, I only observe, that the absolute submission to the supreme power, are the words in the Doctor's Sermon.

Sir *Peter King.* My lords, before your lordships go on to any other, I pray the 17th page of the book which they read, intitled, 'The Vindication of the Authority, Constitution and Laws of the Church and State of Scotland,' may be read.

"The case varies very much when the abuse is such that it tends to a total subversion, which may be called justly a phrenzy, since no man is capable of it, until he be under some lesson of his mind; in which case, the power is to be administered by others, for the prince and his people's safety: but this will never prove that a magistrate governing by law, though there be great errors in government, ought to be coerced: otherwise you must open a door to perpetual broils, since every one by these maxims becomes judge; and where he is both judge and party, is not like to be cast in his pretensions; and even few malefactors die, but they think hard measure is given them. If then forcible self-defence be to be followed, none of these should yield up their lives without using all attempts for rescuing them." (Page 17.)

Mr. *Dee.* My lords, the next we offer is a Sermon preached by the bishop of Ely before the lord mayor and aldermen at Guildhall, the 26th of January 1698.

Clerk reads.] "The patient Christian cannot but condemn those, who under the pretence of defending their rights or religion, resist lawful authority: It being a blasphemy against the divine wisdom and power, to suppose God can ever stand in need of our sins to bring to pass his most glorious designs. He then in whom this virtue of patience dwells, keeps a due regard to the commands laid upon him, to submit himself to the supreme powers; and he dares not lift up his hand against the Lord's anointed, or levy war upon the most plausible account whatsoever; nay, to him it cannot but seem a wonder, that the doctrine of Resistance should have gone down so glibly with any who have read the New Testament, and are baptized into the Christian faith." (Page 19.)

"There is an universal absolute command in the Holy Scripture laid upon all Christians, to be subject to the supreme powers in all cases. Now nothing is plainer, than that if we be required to be subject in all cases, Resistance in any will be sinful. Let every soul be subject to the higher power; to which Christian precept there is no exception to be found for any person, in any instance, from one end of the Christian institution to the other.—Subjection

is a duty, than which there is hardly any oftener repeated in the Christian law, so we cannot plead ignorance of it; it is pressed with such evidence of reason, that cuts off all pretences of evading it; it is set down in such plain, easy, and full expressions, as that there can be no colour to doubt about the right understanding of it. The Holy Scripture gives permission no more to the people collected into one body to rebel, than it does to each of them, by himself singly considered. Every Christian, in all circumstances, is required to conform to the laws of the supreme authority, if they have no repugnancy to God's laws, and to suffer patiently where obedience would be a sin." (Ib. p. 20, 21.)

Mr. Dee. My lords, the next we beg leave to offer, is a Sermon of the bishop of Bath and Wells, preached before the king at Whitehall the 5th of November, 1681.

Clerk reads. "Is he not the vicegerent of God? Wherever therefore his sovereign the Almighty has not prevented him by any precedent commands, there he has a right and liberty to put forth his; in these cases to expect an active cheerful obedience, and that we should in no case, and for no reason resist." (Page 11.)

"The Church, of which we have the blessing to be members, where she cannot obey, is ready to endure, expecting her reward in heaven. Not ignorant how much she suffers now from the contradiction of disloyal men, for the truth of this doctrine, and how much (for its meekness) she stands exposed to future prosecution." (Ib. p. 19.)

Mr. Dee. The next we offer to your lordships, is a Sermon preached by the bishop of Lincoln before your lordships, on the 30th of January, 1708, which was published by your lordships' commands.

Clerk reads. "Die Sabbati, 31 Januarii, 1707-8. Ordered by the Lords spiritual and temporal in Parliament assembled, That the Thanks of this House be, and are hereby given to the lord bishop of Lincoln, for his Sermon preached before this House yesterday, in the Abbey Church in Westminster; and that he be desired to print and publish the same.—Matth. Johnson, Cler. Parliamentor."

"And if neither the malice of the Jews, nor the innocence of our Lord; if neither the truth of our religion persecuted in its Founder, nor the apparent marks of malice and envy, of violence and oppression, which appeared in the whole course of their prosecution of him; were sufficient to warrant St. Peter to draw the sword in his defence, against that legal authority by which they acted; we must conclude, that neither will any of these pretences suffice to justify any other Christians, in the like circumstances, now. But if it shall please God at any time to permit the lawful powers to be against us, and make them that hate us to rule over us; we must follow the example of our blessed Master, and submit patiently to their authority; and not, with this warm Apostle, 'take the sword against those to whom God has committed the power of the sword.'" (Page 15, 16, 17, 18.)

"Let this then suffice to shew, what the true Christian doctrine of submission to the civil magistrate, is. I shall not here enquire, whether some may not possibly have misapplied these principles, or have stretched them further than they ought to have done, and by that means have led both themselves and others into great mistakes, and no less inconveniencies. What that authority in every state or country is, to which such a subjection (as I have now been speaking of) is due, and against which no Resistance (no not to defend the best cause, or the most innocent person in the world) may be used by any of the community, is a point which the municipal laws and constitution of every state and country must determine: but that wherever that supreme power and authority is lodged, or in whomsoever it resides, to which God has commanded us to be subject not only for wrath, but also for conscience sake; concerning which St. Paul has laid down this rule, Let every soul be subject to the higher powers; and St. Peter himself declared, that we must submit to it for the Lord's sake: we are bound to pay either an Active, or Passive Obedience to it; must either do what it requires, or suffer what it inflicts: this is without controversy the standing doctrine of Christianity, and has been confirmed by the practice of the best Christians in all ages of the Church.

"Which being so, let us go on finally (upon these principles) to consider,

"III. What we are to judge of those, who, notwithstanding so plain an admonition, not only took the sword, (though that had been too much) but cut off with it that royal person, who alone had the rightful power of it.

"And here I cannot follow either a plainer or a surer guide, than our laws themselves, which speak not only with authority, but with approbation too; and tell us, in effect, what the sense of the whole nation is, or at least ought to be, both of them and their proceedings. The fact itself they call a horrid execrable, detestable murder; an impious fact, an unparalleled treason: the court, which decreed it, a traiterous assembly, a prodigious, and unheard-of tribunal. The persons who thus unwarrantably drew the sword against their own sovereign, they brand as a parcel of wretched men, desperately wicked, hardened in their impiety. And lastly, as to the principles upon which they proceeded, the same laws declare, "That by the undoubted and fundamental laws of this kingdom, neither the Peers of this realm, nor the Commons, nor both together in parliament, or out of parliament, collectively or representatively, nor any other persons whatsoever, ever had, have, hath, or ought to have, any coercive power over the person of the kings of this realm."

[Clerk reads on by direction of the Managers.]

"Such is the censure which our laws have passed upon the murder of our royal sovereign, and the persons who committed it: and the same is the sense which both the word of God, and the laws of all other nations, teach us to have of both.

"For to allow that some things had been done under the authority of that unfortunate prince less regularly than were to have been wished; that the prerogative had been strained to an exorbitant height, and the subject too much provoked to complain, if not of the king himself, yet of those who were about him, and should have advised, and acted more moderately than they did. To grant that when the parliament met, with which our troubles began, it was excusable, or even fitting for it to have redressed those grievances, and reduced the prerogative within its just bounds; and that those therefore who entered upon the proper methods of doing this in a parliamentary way, without any ill designs, either against the person or government of the king, were not to be blamed. Yet certainly, when this was done, and thereupon such acts were passed, as not only abundantly repaired whatever the subject had suffered before, but sufficiently secured him against any more invasions, either of his liberty or property, for the time to come; for men to proceed farther still, and without any lawful authority, or evident necessity, enter into a war against their sovereign, who had so far condescended to all their just desires, must needs have been as illegal as it was unreasonable, and bespeak those who did it, to have taken the sword in that sense which our Saviour here forbad, and all good men have ever condemned.

"Had that excellent prince indeed never called his last parliament at all, nor given any opportunity to his people to redress their grievances by the proper methods of it; had he not only continued to insist upon those pretensions which some had set up under the shelter of his authority, but so far improved them as utterly to set aside the laws of the realm, and to act arbitrarily, not only without law, but against it; and when nothing else would do, had he chose rather to desert the government, than to rule according to his own oath, and the fundamental laws and limitations of it; this might have warranted an oppressed people to take the sword for the necessary defence of their laws and constitution, and their religion and liberties founded thereupon. But to take up arms against a king, whose excesses had been moderate, and whose necessities pressed him, contrary to his own inclinations, to run into the most of them; but especially, who had already, without force, not only freely redressed the grievances of his people, but abundantly repaired them, and secured them against the like attempts for the future: this must needs have been an unwarrantable enterprize: a war as unjustifiable in its rise, as it proved fatal in its consequences."

Mr. *Dodd.* The next we shall offer to your lordships, is the bishop of Exeter's Sermon preached before her majesty, on her majesty's accession to the throne.

Clerk reads.] "Nay, though the laws of our earthly governors should in some instances be contrary to the divine laws, (upon which supposition the magistrate does certainly exceed the bounds of his commission) yet this does not void their authority, they are the ministers of God for all this; or else there were none that were so, there were none that could be called so, when the Apostle wrote this epistle: and there is a duty lying on subjects even in this case, viz. not to oppose, nor resist the power, but quietly and patiently to suffer the penalty of those laws, which they cannot, without sinning against God, yield an active obedience to." (Page 13, 14.)

Mr. *Dodd.* The next we shall offer to your lordships, is the bishop of St. Asaph's Sermon, preached before the lord mayor, on the 30th of January 1699.

Clerk reads.] "Child, Mayor. Jovis nono die Februarii 1698. Annoque Reg. Regis Willielmi Tertii, Angliæ, &c. decimo.

"This court doth desire Mr. Fleetwood to print his Sermon, preached at the Cathedral Church of St. Paul, the 30th of January last, before the lord mayor, aldermen, and citizens of this city. GOODFELLOW."

Page 18. "It is plain, that a government cannot possibly subsist for any time, where any kind of violence is allowed against the magistrate. We see what wicked work is made in some unhappy states, where private executions of revenge betwixt particulars are indulged, or frequently connived at. But government is at an end, where rulers are exposed to popular assaults."

Mr. *Phipps.* My lords, we shall now produce a Sermon, preached by the bishop of Carlisle before your lordships upon the 30th of January, 1702.

Clerk reads.] "Die Lunæ, 1 Februarii 1702. It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Thanks of this House shall be (and are hereby) given to the lord bishop of Carlisle, for his Sermon preached before this House on the 30th of January last, in the Abbey Church at Westminster: and he is hereby desired to print and publish the same.

"MATTH. JOHNSON, Cl. Parl."

Page 31. "Our foundations, it is to be hoped, are not shaken by the weight of those many great and extraordinary Revolutions that have passed upon us. The all-wise providence of God has frequently of late (and as some of us always thought very graciously) exchanged our governors: but if we ungratefully alter our notions of the divine right of government, and throw off our ancient and primitive rules of obedience, we shall make an unworthy return for the mercies we have received."

Mr. *Phipps.* We beg leave to offer to your lordships three Sermons preached before the House of Commons: one preached before them by Dr. Eyre, upon January 30, 1707.

Clerk reads.] "Sabbat. 31 Die Jan. 1707. Ordered, that the Thanks of this House be given to Dr. Eyre, for the excellent Sermon by him preached before this House at St. Margaret's Westminster, yesterday, being the day appointed for a solemn fast and humiliation, for the murder of king Charles the First; and that he be desired to print the same; and that Mr. Bridges, Mr. Chandler, the lord William Powlett, and Mr. Eyre, do acquaint him therewith.

"PAUL JODDRELL, Cl. Dom. Com."

"Let no seditious and antimonarchical principles be so much as once named among us, as becometh good subjects and good Christians: let no sly insinuations of male-administration be suggested, no new doctrines advanced, nor any old ones revived, whereby to lessen the security of the crown, under the specious pretence of maintaining the rights and liberties of the people."

Mr. *Dee.* The next is Dr. Kennet's Sermon, preached before the Commons, the 30th of January, 1705.

Clerk reads.] "Jovis 31 Die Januarii 1705. Ordered, that the Thanks of this House be given to Dr. Kennet, archdeacon of Huntingdon, for the Sermon by him preached before this House yesterday, at St. Margaret's Westminster: and that he be desired to print the same. And that sir Thomas Littleton, Mr. Worsley, and Mr. King, do acquaint him therewith. PAUL JODDRELL, Cl. Dom. Com."

"This is the true foundation of that common axiom, The king can do no wrong; because there is no right nor remedy against his royal person.

"It was declarative of our original constitution, that our legislature, upon occasion of this day, would have it expressed, That by the undoubted and fundamental laws of this kingdom, neither the Peers of this realm, nor the Commons, nor both together, in parliament, or out of parliament, nor the people collectively, or representatively, nor any other persons whatsoever, ever had, have, or ought to have, any coercive power over the persons of the kings of this realm."

Mr. *Dee.* My lords, the next is Dr. Delaune's Sermon, preached before the House of Commons, upon the 30th of January, 1702.

Clerk reads.] "Lunæ, 1 die Feb. 1702. Ordered, That the Thanks of this House be given to Dr. Delaune, vice-chancellor of the university of Oxford, for the Sermon by him preached before this House on Saturday last, at St. Margaret's, Westminster: and that he be desired to print the same. And that Mr. Bridges, Mr. Bromley, and Mr. Rowney, do acquaint him therewith.

"PAUL JODDRELL, Cl. Dom. Com."

Page 10. "The civil laws of a country are in the nature of articles of agreement between the rulers and their subjects; duty and obedience are secured on one hand, and on the other, protection in civil rights. If the subject breaks his part of the covenant, (as I may call it) his punishment is at hand: and if the supreme power breaks his, his punishment is no less certain, though more remote; for he is guilty before God, who is his ruler; though it is impossible he should be accountable for it in his own dominions, for that would infer a power superior to the supreme, which is a flat contradiction."

Mr. *Dodd.* Your lordships observe by all these sermons, how generally this point is laid down, without making any exception; and yet I do not doubt, but that there is an exception included in every one of these; yet it is always laid down in general terms: and we desire that the same exception may be allowed to the Doctor, as is to all these: and if he has erred, he can only be said 'Errare cum Patribus.'

Mr. *Phipps.* My lords, we have thus far made good our Defence, that this is the doctrine of the Church of England; that the fathers of the Church have always avowed it; that it has been preached in the same terms in which the Doctor has preached it, ever since her majesty's accession to the throne, and no objection has been made to it till now; and that it has been approved by both Houses of Parliament, and by her majesty. We will now proceed to shew, that it is confirmed by several acts of parliament: the first is in the 13th of Charles 2, cap. 30.

Clerk reads.] "And be it hereby declared, That by the undoubted and fundamental laws of this kingdom, neither the Peers of this realm, nor the Commons, nor both together, in parliament, or out of parliament, nor the people collectively or representatively, nor any other persons whatsoever, ever had, hath, or ought to have, any coercive power over the persons of the kings of this realm."

Mr. *Dodd.* The next act of parliament we shall read to your lordships, is the Corporation-Act, 13 Car. 2, stat. 2, § 5.

Clerk reads.] "I A. B. do declare and believe, that it is not lawful, upon any pretence whatsoever, to take up arms against the king; and that I do abhor that traitorous position, of taking arms by his authority against his person, or against those that are commissioned by him. So help me God."

Mr. *Dodd.* This is a general oath, to be taken by all the officers of corporations.

Sir *Jos. Jekyll.* I cannot but observe, my lords, that it is a little extraordinary, the Doctor's counsel should open this act of parliament, and offer it to be read, and not inform your lordships that it is repealed.

Mr. *Dodd.* My lords, we did open it that it is repealed; but we did insist, that as this oath had been taken by all officers of corporations so many years, so it was then a true pro-

position, and still remains so, although it be repealed: that repeal does not make the proposition false.

Mr. *Phipps.* We admit, my lords, that in the Act for Abrogating the Oaths, and appointing others, this paragraph was omitted. But what we offer it for, is to shew that this doctrine has been sworn to by most of the great men, and all the great officers of England, for so many years together.

Mr. *Dodd.* My lords, the next is the Militia Act, 13 & 14 Car. 2, cap. 3. We desire to read the preamble of that act, and then the oath appointed to be taken.

Clerk reads.] "Forasmuch as, within all his majesty's realms and dominions, the sole and supreme power, government, command and disposition of the militia, and of all forces by sea and land, and of all forts and places of strength, is, and (by the laws of England) ever was the undoubted right of his majesty, and his royal predecessors, kings and queens of England; and that both, or either of the Houses of Parliament, cannot, nor ought to pretend to the same; nor can, nor lawfully may, raise or levy any war, offensive or defensive, against his majesty, his heirs or lawful successors: and yet the contrary thereof hath of late years been practised, almost to the ruin and destruction of this kingdom: and during the late usurped governments, many evil and rebellious principles have been instilled into the minds of the people of this kingdom, which may break forth, unless prevented, to the disturbance of the peace and quiet thereof.

§ 18. "I A. B. do declare and believe, that it is not lawful, upon any pretence whatsoever, to take up arms against the king: and that I do abhor that traitorous position, that arms may be taken by his authority against his person, or against those that are commissioned by him, in pursuance of such military commissions. So help me God."

Mr. *Dee.* My lords, the next is the Act of Uniformity, 13 & 14 Car. 2, cap. 4.

Clerk reads.] "And be it further enacted by the authority aforesaid, That every dean, canon, and prebendary of every cathedral or collegiate church, and all masters and other heads, fellows, chaplains, and tutors, of or in any college, hall, house of learning, hospital, and every public professor and reader in either of the universities, and in every college elsewhere, and every parson, vicar, curate, lecturer, and every other person in holy orders, and every school-master keeping any public or private school, and every person instructing or teaching any youth in any house or private family as a school-master, who upon the first day of May, which shall be in the year of our Lord God 1662, or at any time thereafter, shall be incumbent, or have possession of any deanry, canonry, prebend, mastership, headship, fellowship, professor's place, or reader's place, parsonage, vicarage, or any other ecclesiastical dignity or promotion, or any curate's place, lecture or school, or shall instruct or teach any youth as tutor or school-master, shall before the feast-day of St. Bartholomew, which shall be in the year of our Lord, 1662, or at or before his or their respective admission to be incumbent, or have possession aforesaid, subscribe the declaration or acknowledgment following; *(scilicet)*

"I A. B. do declare, That it is not lawful, upon any pretence whatsoever, to take arms against the king; and that I do abhor that traitorous position, of taking arms by his authority against his person, or against those that are commissioned by him: and that I will conform to the liturgy of the Church of England, as it is now by law established. And I do declare, That I hold there lies no obligation upon me, or any other person, from the oath commonly called The Solemn League and Covenant, to endeavour any change or alteration of government either in Church or State; and the same was in itself an unlawful oath, and imposed upon the subjects of this realm, against the known laws and liberties of this kingdom."

Mr. *Phipps.* The reason of our reading this, is to let your lordships see, what obligations were on all clergymen to subscribe this Declaration; and then we submit it to your lordships' judgment, whether the Doctor is criminal for preaching that which all parsons were (before that act was repealed) obliged to subscribe, in order to qualify themselves for preaching. And I beg leave just to observe to your lordships, That by 16 Car. 2, the act for select vestries, all vestrymen were obliged to subscribe the same Declaration.

Mr. *Dodd.* My lords, there are two other acts, but I think we need not read them, because they were so lately made: the one is for the Association, the other for the Abjuration, which is taken almost every day in Westminster-hall.

Mr. *Phipps.* If your lordships please, we shall offer nothing more on this Article, but only some part of his late majesty's Declaration, to shew that there was some reason for what the Doctor said of his late majesty's disclaiming all manner of Resistance.

Sir *Joseph Jekyll.* My lords, I perceive they are going to read some part of his late majesty's Declaration: we should have offered some part of that Declaration as a material proof against the Doctor; but we would not produce any papers as evidence, which are not so; though we allow that to the Doctor. But since it is produced as evidence for the Doctor, I desire it may be read quite through.

Clerk reads.] "The Declaration of his highness, William Henry, by the grace of God, prince of Orange, &c. of the Reasons inducing him to appear in arms in the kingdom of England, for preserving of the Protestant Religion, and for restoring the Laws and Liberties of England, Scotland, and Ireland.

"1. It is both certain and evident to all men, That the public peace and happiness of any

state or kingdom cannot be preserved, where the laws, liberties and customs established by the lawful authority in it, are openly transgressed and annulled: more especially, where the alteration of religion is endeavoured, and that a religion which is contrary to law, is endeavoured to be introduced: upon which those who are most immediately concerned in it, are indispensibly bound to endeavour to preserve and maintain the established laws, liberties and customs, and above all, the religion and worship of God that is established among them; and to take such an effectual care, that the inhabitants of the said state or kingdom, may neither be deprived of their religion, nor of their civil rights. Which is so much the more necessary, because the greatness and security, both of kings, royal families, and of all such as are in authority, as well as the happiness of their subjects and people, depend in a most especial manner upon the exact observation and maintenance of these their laws, liberties and customs.

"2. Upon these grounds it is, that we cannot any longer forbear to declare, That to our great regret, we see that those counsellors, who have now the chief credit with the king, have over-turned the religion, laws and liberties of those realms, and subjected them in all things relating to their consciences, liberties and properties, to arbitrary government; and that not only by secret and indirect ways, but in an open and undisguised manner.

"3. Those evil counsellors, for the advancing and colouring this with some plausible pretexts, did invent and set on foot the king's dispensing power; by virtue of which, they pretend, that, according to law, he can suspend and dispense with the execution of the laws that have been enacted by the authority of the king and parliament, for the security and happiness of the subject, and so have rendered those laws of no effect: though there is nothing more certain, than as no laws can be made, but by the joint concurrence of king and parliament; so likewise laws so enacted, which secure the public peace and safety of the nation, and the lives and liberties of every subject in it, cannot be repealed or suspended but by the same authority.

"4. For though the king may pardon the punishment that a transgressor has incurred, and to which he is condemned, (as in the cases of treason or felony) yet it cannot be with any colour of reason inferred from thence, that the king can entirely suspend the execution of those laws relating to treason or felony; unless it is pretended, that he is cloathed with a despotic and arbitrary power; and that the lives, liberties, honours and estates of the subjects depend wholly on his good will and pleasure, and are entirely subject to him, which must infallibly follow, on the king's having a power to suspend the execution of the laws, and to dispense with them.

"5. Those evil counsellors, in order to the giving some credit to this strange and execrable maxim, have so conducted the matter, that they have obtained a sentence from the judges, declaring, That this dispensing power is a right belonging to the crown: as if it were in the power of the twelve judges to offer up the laws, rights and liberties of the whole nation to the king, to be disposed of by him arbitrarily, and at his pleasure; and expressly contrary to laws enacted for the security of the subjects. In order to the obtaining this judgment, those evil counsellors did before-hand examine secretly the opinion of the judges, and procured such of them as could not in conscience concur in so pernicious a sentence, to be turned out, and others to be substituted in their rooms, till by the changes which were made in the courts of judicature, they at last obtained that judgment. And they have raised some to those trusts, who make open profession of the Popish religion, though those are by law rendered incapable of all such employments.

"6. It is also manifest and notorious, that as his majesty was, upon his coming to the crown, received and acknowledged by all the subjects of England, Scotland, and Ireland, as their king, without the least opposition, though he made then open profession of the Popish religion; so he did then promise, and solemnly swear at his coronation, that he would maintain his subjects in the free enjoyment of their laws and liberties; and in particular that he would maintain the Church of England as it was established by law. It is likewise certain, that there have been at divers and sundry times several laws enacted for the preservation of those rights and liberties, and of the Protestant religion; and among other securities, it has been enacted, that all persons whatsoever, that are advanced to any ecclesiastical dignity, or to bear office in either university, as likewise all other that should be put in any employment, civil or military, should declare that they were not Papists, but were of the Protestant religion, and that by their taking of the Oaths of Allegiance and Supremacy, and the Test; yet these evil counsellors have in effect annulled and abolished all those laws, both with relation to ecclesiastical and civil employments.

"7. In order to ecclesiastical dignities and offices, they have not only without any colour of law, but against most express laws to the contrary, set up a commission, of a certain number of persons, to whom they have committed the cognizance and direction of all ecclesiastical matters; in the which commission there has been, and still is, one of his majesty's ministers of state, who makes now public profession of the Popish religion, and who at the time of his first professing it declared, that for a great while before he had believed that to be the only true religion. By all this, the deplorable state to which the Protestant religion is reduced, is apparent, since the affairs of the Church of England are now put into the hands of persons who have accepted of a commission that is manifestly illegal, and who have exe-

cuted it contrary to all law; and that now one of their chief members has abjured the Protestant religion, and declared himself a Papist; by which he is become uncapable of holding any public employment. The said commissioners have hitherto given such proof of their submission to the directions given them, that there is no reason to doubt, but they will still continue to promote all such designs as will be most agreeable to them. And those evil counsellors take care to raise none to any ecclesiastical dignities, but persons that have no zeal for the Protestant religion, and that now hide their unconcernedness for it under the specious pretence of moderation. The said commissioners have suspended the bishop of London, only because he refused to obey an order that was sent him to suspend a worthy divine, without so much as citing him before him to make his own defence, or observing the common forms of process. They have turned out a president chosen by the Fellows of Magdalen College, and afterwards all the Fellows of that College, without so much as citing them before any court that could take legal cognizance of that affair, or obtaining any sentence against them by a competent judge. And the only reason that was given for turning them out, was their refusing to chuse for their president, a person that was recommended to them by the instigation of those evil counsellors; though the right of a free election belonged undoubtedly to them. But they were turned out of their freeholds contrary to law, and to that express provision in the Magna Charta, that no man shall lose life or goods, but by the law of the land. And now these evil counsellors have put the said college wholly into the hands of Papists, though, as is abovesaid, they are incapable of all such employments, both by the law of the land, and the statutes of the college. These commissioners have also cited before them all the chancellors and archdeacons of England, requiring them to certify to them the names of all such clergymen as have read the king's declaration for Liberty of Conscience, and of such as have not read it; without considering that the reading of it was not injoined the clergy by the bishops, who are their ordinaries. The illegality and incompetency of the said court of the ecclesiastical commissioners was so notoriously known, and it did so evidently appear that it tended to the subversion of the Protestant religion, that the most reverend father in God, William archbishop of Canterbury, primate and metropolitan of all England, seeing that it was raised for no other end but to oppress such persons as were of eminent virtue, learning and piety, refused to sit, or to concur in it.

"8. And though there are many express laws against all churches or chapels for the exercise of the Popish religion, and also against all monasteries and convents, and more particularly against the order of the Jesuits; yet those evil counsellors have procured orders for the building of several churches and chapels for the exercise of that religion. They have also procured divers monasteries to be erected; and in contempt of the law, they have not only set up several colleges of Jesuits in divers places for the corrupting of the youth, but have raised up one of the order to be a privy-counsellor, and a minister of state. By all which they do evidently shew, that they are restrained by no rules of law whatsoever; but that they have subjected the honours and estates of the subjects, and the established religion to a despotic power, and to arbitrary government. In all which they are served and seconded by those ecclesiastical commissioners.

"9. They have also followed the same methods with relation to civil affairs; for they have procured orders to examine all lords-lieutenants, deputy-lieutenants, sheriffs, justices of peace, and all others that were in any public employment, if they would concur with the king in the repeal of the Test and penal laws; and all such whose consciences did not suffer them to comply with their designs were turned out, and others were put in their places, who, they believed, would be more compliant to them in their designs of defeating the intent and execution of those laws which had been made with so much care and caution for the security of the Protestant religion. And in many of these places they have put professed Papists, though the law has disabled them, and warranted the subjects not to have any regard to their orders.

"10. They have also invaded the privileges, and seized on the charters of most of those towns that have a right to be represented by their burgesses in parliament, and have procured surrenders to be made of them, by which the magistrates in them have delivered up all their rights and privileges, to be disposed of at the pleasure of those evil counsellors, who have thereupon placed new magistrates in those towns, such as they can most entirely confide in; and in many of them they have put Popish magistrates, notwithstanding the incapacities under which the law has put them.

"11. And whereas no nation whatsoever can subsist without the administration of good and impartial justice, upon which men's lives, liberties, honours and estates do depend, those evil counsellors have subjected these to an arbitrary and despotic power. In the most important affairs, they have studied to discover, before-hand, the opinion of the judges, and have turned out such as they found would not conform themselves to their intentions, and have put others in their places, of whom they were more assured, without having any regard to their abilities. And they have not stuck to raise even professed Papists to the courts of judicature, notwithstanding their incapacity by law; and that no regard is due to any sentences flowing from them. They have carried this so far, as to deprive such judges, who in the common administration of justice, shewed that they were governed by their consciences, and not by the directions which the

others give them. By which it is apparent, that they design to render themselves the absolute masters of the lives, honours and estates of the subjects, of what rank or dignity soever they may be; and that without having any regard either to the equity of the cause, or to the consciences of the judges, whom they will have to submit in all things to their own will and pleasure; hoping by such ways to intimidate those who are yet in employment, as also such others, as they shall think fit to put in the rooms of those whom they have turned out; and to make them see what they must look for, if they should at any time act in the least contrary to their good liking; and that no failings of that kind are pardoned in any persons whatsoever. A great deal of blood has been shed in many places of the kingdom, by judges governed by those evil counsellors, against all the rules and forms of law, without so much as suffering the persons that were accused to plead in their own defence.

"12. They have also by putting the administration of justice in the hands of Papists, brought all the matters of civil justice into great uncertainties; with how much exactness and justice soever that these sentences may have been given. For since the laws of the land do not only exclude Papists from all places of judicature, but have put them under an incapacity, none are bound to acknowledge or to obey their judgments, and all sentences given by them are null and void of themselves: So that all persons who have been cast in trials before such Popish judges, may justly look on their pretended sentences, as having no more force than the sentences of any private or unauthorized person whatsoever. So deplorable is the case of the subjects who are obliged to answer to such judges, that must in all things stick to the rules which are set them by those evil counsellors, who, as they raised them up to those employments, so can turn them out of them at pleasure, and who can never be esteemed lawful judges; so that all their sentences are in the construction of the law of no force and efficacy. They have likewise disposed of all military employments in the same manner; for though the laws have not only excluded Papists from all such employments, but have in particular provided, that they should be disarmed; yet they, in contempt of these laws, have not only armed the Papists, but have likewise raised them up to the greatest military trust both by sea and land; and that strangers as well as natives, and Irish as well as English; that so by those means, having rendered themselves masters both of the affairs of the church, of the government, of the nation, and of the courts of justice, and subjected them all to a despotic and arbitrary power, they might be in a capacity to maintain and execute their wicked designs by the assistance of the army, and thereby to enslave the nation.

"13. The dismal effects of this subversion of the established religion, laws and liberties in England, appear more evidently to us, by what we see done in Ireland; where the whole government is put into the hands of Papists, and where all the Protestant inhabitants are under the daily fears of what may be justly apprehended from the arbitrary power which is set up there; which has made great numbers of them leave that kingdom, and abandon their estates in it, remembering well that cruel and bloody massacre which fell out in that island in the year 1641.

"14. Those evil counsellors have also prevailed with the king to declare in Scotland, that he is cloathed with absolute power, and that all the subjects are bound to obey him without reserve: upon which he has assumed an arbitrary power both over the religion and laws of that kingdom; from all which it is apparent, what is to be looked for in England, as soon as matters are duly prepared for it.

"15. Those great and insufferable oppressions, and the open contempt of all law, together with the apprehensions of the sad consequences that must certainly follow upon it, have put the subjects under great and just fears; and have made them look after such lawful remedies as are allowed of in all nations; yet all has been without effect. And those evil counsellors have endeavoured to make all men apprehend the loss of their lives, liberties, honours and estates, if they should go about to preserve themselves from this oppression by petition, representations, or other means authorized by law. Thus did they proceed with the archbishop of Canterbury, and the other bishops, who having offered a most humble petition to the king, in terms full of respect, and not exceeding the number limited by law; in which they set forth in short, the reasons for which they could not obey that order, which, by the instigation of those evil counsellors, was sent them, requiring them to appoint their clergy to read in their churches the Declaration for Liberty of Conscience; were sent to prison, and afterwards brought to a trial, as if they had been guilty of some enormous crime. They were not only obliged to defend themselves in that pursuit, but to appear before professed Papists, who had not taken the Test, and by consequence were men whose interest led them to condemn them; and the judges that gave their opinions in their favours, were thereupon turned out.

"16. And yet it cannot be pretended, that any kings, how great soever their power has been, and how arbitrary and despotic soever they have been in the exercise of it, have ever reckoned it a crime for their subjects to come in all submission and respect, and in a due number, not exceeding the limits of the law, and represent to them the reasons that made it impossible for them to obey their orders. Those evil counsellors have also treated a peer of the realm as a criminal, only because he said, that the subjects were not bound to obey the orders of a Popish justice of peace; though it is evident, that they being by law rendered inca-

pable of all such trusts, no regard is due to their orders. This being the security which the people have by the law for their lives, liberties, honours, and estates, that they are not to be subjected to the arbitrary proceedings of Papists, that are contrary to law put into any employments civil or military.

"17. Both we ourselves, and our dearest and most intirely beloved consort the princess, have endeavoured to signify, in terms full of respect to the king, the just and deep regret which all these proceedings have given us; and in compliance with his majesty's desires signified to us, We declared both by word of mouth, to his envoy, and in writing, what our thoughts were, touching the repealing of the Test and penal laws; which we did in such a manner, that we hoped we had proposed an expedient, by which the peace of those kingdoms, and a happy agreement among the subjects of all persuasions, might have been settled: But those evil counsellors have put such ill-constructions on these our good intentions, that they have endeavoured to alienate the king more and more from us; as if we had designed to disturb the quiet and happiness of the kingdom.

"18. The last and great remedy for all those evils, is the calling of a parliament, for securing the nation against the evil practices of those wicked counsellors: But this could not be yet compassed, nor can it be easily brought about. For those men apprehending, that a lawful parliament being once assembled, they would be brought to an account for all their open violations of law, and for their plots and conspiracies against the Protestant religion, and the lives and liberties of their subjects; they have endeavoured, under the specious pretence of Liberty of Conscience, first to sow divisions among Protestants, between those of the Church of England and the Dissenters: the design being laid to engage Protestants, that are all equally concerned to preserve themselves from Popish oppression, into mutual quarrellings, that so by these, some advantages might be given to them to bring about their designs; and that both in the election of members of parliament, and afterwards in the parliament itself. For they see well, that if all Protestants could enter into a mutual good understanding one with another, and concur together in the preserving of their religion, it would not be possible for them to compass their wicked ends. They have also required all persons, in the several counties of England, that either were in any employment, or were in any considerable esteem, to declare beforehand, that they would concur in the repeal of the Test and penal laws; and that they would give their voices in the elections to parliament, only for such as would concur in it. Such as would not thus pre-engage themselves, were turned out of all employments; and others who entered into those engagements, were put in their places, many of them being Papists. And contrary to the charters and privileges of those boroughs that have a right to send burgesses to parliament, they have ordered such regulations to be made as they thought fit and necessary, for assuring themselves of all the members that are to be chosen by those corporations: And by this means they hope to avoid that punishment which they have deserved; though it is apparent, that all acts made by Popish magistrates are null and void of themselves. So that no parliament can be lawful, for which the elections and returns are made by Popish sheriffs and mayors of towns; and therefore, as long as the authority and magistracy is in such hands, it is not possible to have any lawful parliament. And though, according to the constitution of the English government, and immemorial custom, all elections of parliament-men ought to be made with an entire liberty, without any sort of force, or the requiring the electors to chuse such persons as shall be named to them; and the persons thus freely elected, ought to give their opinions freely upon all matters that are brought before them; having the good of the nation ever before their eyes, and following in all things the dictates of their conscience; yet now the people of England cannot expect a remedy from a free parliament, legally called and chosen. But they may, perhaps, see one called, in which all elections will be carried by fraud or force; and which will be composed of such persons, of whom those evil counsellors hold themselves well assured; in which all things will be carried on according to their direction and interest, without any regard to the good or happiness of the nation. Which may appear evidently from this, that the same persons tried the members of the last parliament, to gain them to consent to the repeal of the Test and penal laws; and procured that parliament to be dissolved, when they found that they could not, neither by promises nor threatenings, prevail with the members to comply with their wicked designs.

"19. But to crown all, there are great and violent presumptions, inducing us to believe, that those evil counsellors, in order to the carrying on of their ill designs, and to the gaining to themselves the more time for the effecting of them, (for the encouraging of their complices, and for the discouraging of all good subjects) have published, that the queen hath brought forth a son; though there have appeared, both during the queen's pretended bigness, and in the manner in which the birth was managed, so many just and visible grounds of suspicion, that not only we ourselves, but all the good subjects of those kingdoms, do vehemently suspect, that the pretended prince of Wales was not born by the queen. And it is notoriously known to all the world, that many both doubted of the queen's bigness, and of the birth of the child; and yet there was not any one thing done to satisfy them, or to put an end to their doubts.

"20. And since our dearest and most entirely-beloved consort the princess, and like-

wise we ourselves have so great an interest in this matter, and such a right (as all the world knows) to the succession to the crown: since also the English did in the year 1672, when the States General of the United Provinces were invaded in a most unjust war, use their utmost endeavours to put an end to that war, and that in opposition to those who were then in the government; and by their so doing, they run the hazard of losing both the favour of the court, and their employments. And since the English nation has ever testified a most particular affection and esteem, both to our dearest consort the princess, and to ourselves, we cannot excuse ourselves from espousing their interests, in a matter of such high consequence; and from contributing all that lies in us, for the maintaining both of the Protestant religion, and of the laws and liberties of those kingdoms, and for the securing to them the continual enjoyment of all their just rights. To the doing of which, we are most earnestly solicited by a great many lords, both spiritual and temporal, and by many gentlemen, and other subjects of all ranks.

"21. Therefore it is, that we have thought fit to go over to England, and to carry over with us a force, sufficient, by the blessing of God, to defend us from the violence of those evil counsellors. And we being desirous that our intentions in this may be rightly understood, have, for this end, prepared this Declaration, in which, as we have hitherto given a true account of the reasons inducing us to it; so, we now think fit to declare, that this our expedition is intended for no other design, but to have a free and lawful parliament assembled, as soon as is possible: and that in order to this, all the late charters, by which the election of burgesses are limited contrary to the ancient custom, shall be considered as null and of no force: and likewise all magistrates who have been unjustly turned out, shall forthwith resume their former employments, as well as all the boroughs of England shall return again to their ancient prescriptions and charters: and more particularly, that the ancient charter of the great and famous city of London shall again be in force: and that the writs for the members of parliament shall be addressed to the proper officers, according to law and custom. That also none be suffered to chuse, or to be chosen members of parliament, but such as are qualified by law: and that the members of parliament being thus lawfully chosen, they shall meet and sit in full freedom; that so the two Houses may concur in the preparing of such laws, as they, upon full and free debate, shall judge necessary and convenient, both for the confirming and executing the law concerning the Test, and such other laws as are necessary for the security and maintenance of the Protestant religion: as likewise for making such laws as may establish a good agreement between the Church of England and all Protestant Dissenters; as also for the covering and securing of all such who will live peaceably under the government, as becomes good subjects, from all persecution upon the account of their religion, even Papists themselves not excepted; and for the doing of all other things, which the two Houses of Parliament shall find necessary for the peace, honour and safety of the nation, so that there may be no more danger of the nation's falling at any time hereafter under arbitrary government. To this parliament we will also refer the enquiry into the birth of the pretended prince of Wales, and of all things relating to it, and to the right of succession.

"22. And we, for our part, will concur in every thing that may procure the peace and happiness of the nation, which a free and lawful parliament shall determine; since we have nothing before our eyes in this our undertaking, but the preservation of the Protestant religion, the covering of all men from persecution for their consciences, and the securing to the whole nation the free enjoyment of all their laws, rights and liberties, under a just and legal government.

"23. This is the design that we have proposed to ourselves, in appearing upon this occasion in arms: in the conduct of which, we will keep the forces under our command, under all the strictness of martial discipline; and take a special care, that the people of the countries, through which we must march, shall not suffer by their means; and as soon as the state of the nation will admit of it, we promise that we will send back all those foreign forces that we have brought along with us.

"24. We do therefore hope that all people will judge rightly of us, and approve of these our proceedings: but we chiefly rely on the blessing of God for the success of this our undertaking, in which we place our whole and only confidence.

"25. We do, in the last place, invite and require all persons whatsoever, all the peers of the realm both spiritual and temporal, all lords-lieutenants, deputy-lieutenants, and all gentlemen, citizens, and other commons of all ranks, to come and assist us, in order to the executing of this our design, against all such as shall endeavour to oppose us; that so we may prevent all those miseries which must needs follow upon the nation's being kept under arbitrary government and slavery: and that all the violences and disorders which have overturned the whole constitution of the English government, may be fully redressed in a free and legal parliament.

"26. And we do likewise resolve, that as soon as the nations are brought to a state of quiet, we will take care that a parliament shall be called in Scotland, for restoring the ancient constitution of that kingdom, and for bringing the matters of religion to such a settlement, that the people may live easy and happy, and for putting an end to all the unjust violences, that have been in a course of so many years committed there.

"We will also study to bring the kingdom of Ireland to such a state, that the settlement

there may be religiously observed; and that the Protestant and British interest there may be secured. And we will endeavour by all possible means to procure such an establishment in all the three kingdoms, that they may all live in a happy union and correspondence together; and that the Protestant religion, and the peace, honour and happiness of these nations, may be established upon lasting foundations.

"Given under our hand and seal, at our Court in the Hague, the 10th day of Oct. in the year of our Lord 1688.

"WILLIAM HENRY, Prince of ORANGE."

"By his Highness's Special Command,

"C. HUYGENS."

HIS HIGHNESS'S ADDITIONAL DECLARATION.

"After we had prepared and printed this our Declaration, we have understood, that the subverters of the religion and laws of those kingdoms, hearing of our preparations to assist the people against them, have begun to retract some of the arbitrary and despotic powers that they had assumed, and to vacate some of their unjust judgments and decrees. The sense of their guilt, and the distrust of their force, have induced them to offer to the city of London some seeming relief from their great oppressions; hoping thereby to quiet the people, and to divert them from demanding a re-establishment of their religion and laws under the shelter of our arms: they do also give out, that we do intend to conquer and enslave the nation; and therefore it is that we have thought fit to add a few words to our Declaration.

"We are confident, that no persons can have such hard thoughts of us, as to imagine that we have any other design in this undertaking, than to procure a settlement of the religion, and of the liberties and properties of the subjects, upon so sure a foundation, that there may be no danger of the nations relapsing into the like miseries at any time hereafter. And as the forces that we have brought along with us, are utterly disproportionate to that wicked design of conquering the nation, if we were capable of intending it; so the great numbers of the principal nobility and gentry, that are men of eminent quality and estates, and persons of known integrity and zeal both for the religion and government of England, many of them also being distinguished by their constant fidelity to the crown, who do both accompany us in this expedition, and have earnestly solicited us to it, will cover us from all such malicious insinuations: for it is not to be imagined, that either those who have invited us, or those that are already come to assist us, can join in a wicked attempt of conquest, to make void their own lawful titles to their honours, estates and interests. We are also confident, that all men see how little weight there is to be laid on all promises and engagements that can be now made; since there has been so little regard had in time past, to the most solemn promises. And as that imperfect redress that is now offered, is a plain confession of those violations of the government that we have set forth; so the defectiveness of it is no less apparent: for they lay down nothing which they may not take up at pleasure; and they reserve entire, and not so much as mentioned, their claim and pretences to an arbitrary and despotic power; which has been the root of all their oppression, and of the total subversion of the government. And, it is plain, that there can be no redress, no remedy offered but in parliament; by a declaration of the rights of the subjects that have been invaded, and not by any pretended acts of grace, to which the extremity of their affairs has driven them. Therefore it is that we have thought fit to declare, that we will refer all to a free assembly of the nation, in a lawful parliament.

"Given under our hand and seal, at our Court in the Hague, the 24th day of October, in the year of our Lord 1688.

"WILLIAM HENRY, Prince of ORANGE."

"By his Highness's Special Command

"C. HUYGENS."

Mr. *Phipps.* My lords, the reason why we humbly offer this Declaration, is with relation to that passage in the Sermon, which says, that the prince of Orange disclaimed all manner of Resistance. All we observe is, that it does not appear that he came over with an army with any other intent than to defend himself against evil counsellors: and if the Doctor has made a wrong inference, we submit it to your lordships, whether such a misapprehension of his highness's meaning, shall subject him to a charge of High Crimes and Misdemeanors?

Mr. *Dodd.* My lords, we have finished what we have to offer on this Article, and submit it to your lordships whether we have not made good our Defence. We are ready to go on to the second Article, if it be your lordships' pleasure.

Then the Lords adjourned to their House above.

SEVENTH DAY.

Monday, March 6.

The Lords coming down into Westminster-hall, and being seated in the manner before-mentioned, proclamation was made by the serjeant at arms as follows:

Our sovereign lady the queen doth strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

Then another proclamation was made: Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy bail, else thou forfeitest thy recognizance.

The Doctor appearing at the bar accordingly with his counsel as before:

Lord Chancellor. Gentlemen, you that are counsel for the prisoner, may proceed in his defence.

Mr. *Dodd.* My lords, we who are counsel for Dr. Sacheverell, beg the favour that we

may enter on the Doctor's defence as to the second Article: this Article is divided into three heads. 1. That the Toleration is unreasonable, and the allowance of it unwarrantable. 2. That he is a False Brother who defends Toleration and Liberty of Conscience. 3. That it is the duty of the chief pastors to thunder out anathemas, &c.

The first head I shall speak to is, as to the Toleration. My lords, we say there is no such thing as a Toleration granted by law; the word is not to be found in the act of parliament; there is an act (which we suppose is intended) to exempt Protestant dissenters from the penalties of certain laws therein mentioned: however, in this debate we shall take notice of it as a Toleration; although we think, when there is a legal proceeding, the act should have been called by its own proper name: now, my lords, this act of parliament hath several restrictions and limitations in it, and (amongst others) not to exempt any persons from the penalties, that do not frequent some religious assembly thereby allowed. The Doctor no where finds fault with a legal Toleration, or a Toleration granted by law, within the description and meaning of this act of parliament. My lords, we think the Doctor has taken such care, lest any expression should undergo a wrong construction, as if he were uneasy at the Toleration, that he explains himself very particularly about it: we shall read the words out of the Sermon, which I think will clear the Doctor as to this objection; the Doctor says, "Pray, do not misunderstand me, as if I reflected upon that indulgence the government has given the Dissenters, which I am sure all well-wishers to our Church are ready to grant; nor do I intend to cast the least reflection on that indulgence, which the law has given to consciences truly scrupulous; let them enjoy it in the full limits the law has prescribed."

Now, after such a declaration, so plain a confession, so full in the case, in words as significant as can be to shew his meaning, we hope there is no room to tax him with this part of the Article by any incoherent words or inferences, when it is directly contrary to what he has in words at length expressed.

My lords, this being considered, we think it is too hard to draw inferences, and consequences, that the Doctor is against the Toleration allowed by law; it is not to be done with candour by any one that reads the Sermon without prejudice, and considers the care he takes to avoid giving any offence in this case.

As to the second part of this Article, we think it may receive the same Answer; that he is a false brother who defends Toleration and Liberty of Conscience. The Doctor does not say they are False Brethren that defend a legal Toleration; nobody complains of that; but the persons intended, are those that defend an unlawful Toleration, and not a legal exemption; which legal exemption the Doctor admits to be good and just, in the passage I have before repeated. We apprehend, the Doctor means those are False Brethren, and blamable, that excuse the separation from the Church, not on account of the Toleration, but by laying the faults on the true sons of the Church, for carrying matters too high; these are the people, the False Brethren, that cry out against the Church upon all occasions.

As to the Doctor's expressions about archbishop Grindall, the Doctor thought he had good grounds for them; but at least they were but unwary expressions, and we hope not criminal. The Toleration he mentions archbishop Grindall to be blamed for, was quite another thing from the present indulgence now granted; the first was by queen Elizabeth, alone, or by the archbishop's authority under her, and without the parliament; the Dissenters were then few, and it had been no great difficulty to have prevented that schism at the beginning. But now the Dissenters are a considerable part of the nation, have great riches and properties amongst us, and it became the wisdom of the legislature, to give them an indulgence according to the restrictions in the act of parliament: but this is a different case, and by a different authority, from what was in archbishop Grindall's time. The story of that archbishop, as related by one of the gentlemen managers, does indeed acquit the archbishop, but how far it clears queen Elizabeth, we must leave to your lordships; for should a great favourite attempt to procure a grant of the archbishop's palace, or a chief revenue of that see or church, and that the archbishop's opposing the favourite herein (as was by the gentlemen suggested) should be the reason of his disgrace; or, if the archbishop did prosecute or punish a man in the spiritual court for having two wives at the same time; (which prosecution or punishment was highly commendable in the archbishop, and was his duty to do) it would be hard to think, that queen Elizabeth should suspend him from the archbishopric for such a proceeding, for thus discharging his duty; therefore we cannot give credit to that history as it is related; but we shall shew your lordships, from the archbishop's letter to the council, and letters from Beza and Calvin at that time, that it was his indulgence to the Dissenters of that time, that drew the anger of queen Elizabeth on him; and that this was the reason of it, we shall make out by undeniable proof. Now, my lords, we apprehend the fault the Doctor finds in his Sermon is against an universal general Toleration, that tend to a dissolution of all things; and such a Toleration, would make religion, like that of the Samaritans, a mixture of all sorts, that was odious to the world, and an abominations to the Jews; and indeed, my lords, we apprehend such a Toleration the Doctor had great reason to find fault with. Surely such a Toleration is not to be defended, nor would be of any service to either Church or State: this is the Toleration which we think the Doctor intended, and not against a legal or particular exemption, which the wisdom of the nation hath thought to give. Indeed he thinks,

that Occasional Conformists do attempt to hoist the Toleration into an establishment, and come into the communion of the Church to serve a particular purpose; and this at most can only be said to be the Doctor's opinion of that matter, and whether true or false, cannot be criminal. To speak against a law, or to break a law, is not to be justified: nor has he spoke against this law; but if he had, surely he had been punishable in the ordinary methods of justice, and not in a proceeding of this nature.

As to the next head, that is, as to that part of the charge about thundering out anathemas; the discourse is general, and not determined to any persons, nor pointed at the Dissenters, but properly intended against irreligion; and the sentence that he dares any power on earth to reverse, is such and such only, as is ratified in heaven. He believes some sentences of the Church to be ratified in heaven; and if that sentence which is pronounced here on earth be ratified in heaven, it is, beyond all dispute, out of the power of man to reverse it. He supposes some persons exempt from punishment by particular laws, may yet, by the law of Christ, be liable to such a sentence: but from hence, or his Answer to the Articles, to draw a conclusion, that he asserts the state had not power to reverse the sentence of the spiritual court, (of which there can be no doubt but that the legislature has such a power) or that the legislature is guilty of blasphemy, (as has been objected by one of the gentlemen managers) is neither true reason nor logic.

That schism is a sin punishable by the laws of the Church, will not be disputed, if it be a separation without a just cause; and how far this is such a separation, or that the act of parliament has taken away this schism, this sin, we submit to your lordships.

Mr. *Phipps*. My lords, we are come now to the second Article, and we humbly apprehend, shall give your lordships as full satisfaction of the Doctor's innocence, as to that crime charged in this Article, as we hope we did as to those contained in the first Article.

As to that part of the second Article which says, "That the Doctor does suggest and maintain, that the Toleration granted by law is unreasonable, and the allowance of it unwarrantable:" he conceives there is nothing in his Sermon can warrant that charge. The Toleration Act is not what the Doctor finds fault with, but the persons that abuse it; and I beg leave to say, that the ill use which is made of it, is unreasonable and unwarrantable. But, that the Doctor asserts the Toleration itself to be unreasonable, or the allowance of it unwarrantable, will appear to be a great mistake, when the paragraphs in the Doctor's Sermon, upon which this Article is founded, are considered.

My lords, the first passage is in page the 8th, where the Doctor says thus: "If upon all occasions to comply with the Dissenters, both in public and private affairs, as persons of tender consciences and piety, to promote their interests in elections, to sneak to them for places and preferment, to defend Toleration and Liberty of Conscience, and under the pretence of moderation, to excuse their separation, and lay the fault upon the true sons of the Church for carrying matters too high, &c." These are some of the characters which the Doctor gives of False Brethren: but, is there any thing in this passage that avers Toleration to be unreasonable, or the allowance of it unwarrantable?

Page the 10th, the Doctor hath these words, which were urged to prove this Article: "Our Constitution, both in Church and State, has been so admirably contrived, with that wisdom, weight and sagacity, and the temper and genius of each so exactly suited and modelled to the mutual support and assistance of one another, that it is hard to say, whether the doctrines of the Church of England contribute more to authorize and enforce our civil laws, or our laws to maintain and defend the doctrines of our Church. The natures of both are so nicely correspondent, and so happily intermixed, that it is almost impossible to offer a violation to the one, without breaking in upon the body of the other. So that in all those cases before-mentioned, whoever presumes to innovate, alter, or misrepresent any point in the articles of the faith of our Church, ought to be arraigned as a traitor to the state; heterodoxy in the doctrines of the one, naturally producing, and almost necessarily inferring rebellion and high-treason in the other; and consequently a crime that concerns the civil magistrate as much to punish and restrain, as the ecclesiastical." Can this be meant of the Toleration? Is the Toleration so much as mentioned here? Does he not here speak against such as innovate, alter, or misrepresent the articles of our faith? Is there any innovation, alteration, or misrepresentation of any article of our faith by the Protestant Dissenters? The Dissenters do not differ from us in matters of faith, but in matters of form and ceremony; if they differed from us in matters of faith, they would be heretics, and heresy was never intended to be tolerated by the Act of Indulgence: and therefore what the Doctor says in this paragraph, can never be taken to be a reflection on the Toleration.

I shall next humbly offer to your lordships' consideration another clause, which was cited by the gentlemen of the House of Commons to support this Article, which is page 14, where it is said, "These False Brethren in our government, do not singly, and in private, spread their poison, (but what is lamentable to be spoken) are suffered to combine into bodies, and seminaries, wherein Atheism, Deism, Tritheism, Socinianism, with all the hellish principles of Fanaticism, Regicide and Anarchy, are openly professed, and taught, to corrupt and debauch the youth of the nation, in all parts of it, down to posterity, to the present reproach, and future extirpation of our laws

and religion. Certainly the Toleration was never intended to indulge and cherish such monsters and vipers in our bosom, that scatter their pestilence at noon-day, and will rend, distract, and confound, the firmest and best-settled constitution in the world." Is there any thing in this clause that can maintain this Article? The Doctor says, certainly the Toleration was never intended to indulge and cherish such monsters and vipers in our bosom, as Atheists, Tritheists, Socinians, &c. And the Doctor is well warranted in saying that, because those enormous crimes are particularly excepted in the Act of Toleration, and for this we refer to the Act itself.

The next clause that was urged to maintain this Article is in the 16th page, where the Doctor expresseth himself in these words: "But since this model of an universal liberty and coalition failed, and these False Brethren could not carry the Conventicle into the Church, they are now resolved to bring the Church into the Conventicle, which will more plausibly and silly effect her ruin: what could not be gained by comprehension and toleration, must be brought about by moderation and occasional conformity; that is, what they could not do by open violence, they will not fail by secret treachery to accomplish. If the Church cannot be pulled down, it may be blown up; and no matter with these men how it is destroyed, so that it is destroyed." Does this suggest the Toleration to be unreasonable, or the allowance of it unwarrantable? It rather excuses it from having hurt the Church: for he says, "What could not be gained by toleration, must be brought about by moderation and occasional conformity;" so that the injury which is done to the Church is ascribed by him to some other cause. Thus your lordships observe there is not any passage in the Doctor's Sermon, whereby he suggests that the Toleration granted by law is unreasonable, or the allowance of it unwarrantable, and consequently no foundation for this Article, unless it is to be supported by inferences contrary to the Doctor's express words: for the Doctor in his Sermon, page 20, says, "I would not here be understood, as if I intended to cast the least invidious reflection upon that indulgence the government has condescended to give them, which I am sure all those that wish well to our Church are very ready to grant to consciences truly scrupulous; let them enjoy it in the full limits the law has prescribed." By which it is evident, he allows the indulgence given by the Act to Dissenters, and is very far from suggesting, that it is unreasonable, or the allowance of it unwarrantable. He wishes with all his heart they may enjoy it in the full limits of the law. And therefore if there be any other expressions concerning Toleration, which may seem to carry a dubious sense, it is humbly conceived they ought not to be applied to the exemption granted by law, but will be so interpreted as may consist with his avowed approbation of that law. For in all writings, such exposition is to be made, that one part may not contradict or be inconsistent with the other. But to strain the sense of any ambiguous clause, and to put such a construction upon it, as to make it contradict a plain and positive assertion in the same writing, was never allowed, and I am sure will not be permitted by your lordships, who have shewed such a just abhorrence of strained and foreign insinuations and innuendoes. And therefore, where he seems to blame those who defend Toleration, he cannot be thought to condemn the indulgence granted by law, because he hath in such positive and express terms allowed and approved of it.

But it must have some other meaning, and I think his meaning is very plain. For, by condemning such as defend Toleration, it is evident he means such as maintain, that the Act of Indulgence is a justification of their separation, and excuseth them from the sin of schism: for the defence of toleration, and excuse of separation, are mentioned in one and the same clause of the sentence, and in one and the same branch of their character of False Brethren. So that the true and genuine sense of what he hath said in his Sermon concerning Toleration is,

1. That he entirely approves of the exemption by the Act of Indulgence of Protestant Dissenters from the several penalties inflicted by the several statutes for their non-conformity.

2. That though they are exempt from the penalties, yet that does not excuse their separation from the sin of schism in *foro conscientiæ*. And is the Doctor alone in this notion? Is not he justified in it by the opinion of many learned men who have writ on that subject? Nay, I appeal to your lordships, whether it be not the concurrent opinion of the greatest part, if not all the learned men of our Church, at this day.

And since the Act of Uniformity is in force, and is not repealed or enervated by the Act of Indulgence, since the doctrine and worship of the Church of England is the established religion of this kingdom, whether a separation from the Church, since the Act of Indulgence, is not as much a schism in *foro conscientiæ*, as it was before, is humbly submitted?

But suppose that separation from the Church by Dissenters, since the Act of Indulgence, should not be thought a schism; yet he having the opinion of so many learned men on his side, his assertion cannot be said to be wicked, malicious, and seditious, nor to be so high a crime and misdemeanor, as to be the subject matter of an impeachment.

But the passages in the Doctor's Sermon, which are supposed to condemn the Toleration, or to reflect on the Dissenters, are open to another plain and natural construction. For since he positively, and in express terms, allows Liberty of Conscience to consciences truly scrupulous, and which are intitled to the benefit of the Act: where he condemns or

speaks against Toleration, it must be intended as to such Dissenters who are not intitled to the benefit of the Act, but are excepted out of it: and those are such as by printing or writing deny the Trinity, such as do not come to some assembly of religious worship allowed by that Act; and no assembly of religious worship is allowed by that Act until the place of meeting be certified to the bishop, archdeacon, or justices at the quarter-sessions, and recorded, and a certificate thereof given: and what multitudes frequent religious assemblies which are not allowed by that Act? Nay, how few religious assemblies are qualified according to the Act? What vast numbers go to no religious worship at all? And how many there are who deny the second person of the Trinity, is too evident: and against every one of these, all the laws for frequenting divine service on the Lord's-day are still in force, by the express words of that Act. Therefore all those who defend a general Toleration, who maintain that the Act extends to all such Dissenters, are justly censured by the Doctor; and all the expressions in the Doctor's Sermon against Toleration must be intended against those excepted in the Act, since he so expressly approves the indulgence allowed to those that conform to the terms prescribed by the Act.

My lords, as to that branch of this second Article, which charges the Doctor with asserting, That queen Elizabeth was deluded by archbishop Grindall to the toleration of the Genevian discipline; whether he be not warranted in this assertion, is humbly submitted to your lordships, when it is considered that archbishop was once in the highest esteem with the queen, she made him bishop of London, then archbishop of York, and afterwards promoted him to the see of Canterbury; and that after this he was in disgrace, and died in her majesty's displeasure, cannot be denied. The reason assigned for his disgrace was, that he was a great encourager of unlawful conventicles, or prophesyings, as they were then called. Whether that charge against him was true, or whether it was only a false suggestion of the earl of Leicester, to remove him from the queen's favour, I will not presume to determine. The learned manager who spoke first to this Article, was pleased to acquit the archbishop, and lay the fault upon the queen; though, whoever reads Calvin's and Beza's letters to him, when bishop of London, whoever reads queen Elizabeth's letter to the bishops, dated the 3rd of May, 1577, and the archbishop's own letter to the lords of the council the 25th of November, 1577, will be fully satisfied that he was not innocent; for he confesses he was commanded by the queen and council to suppress the prophesyings, and that he refused, and could not comply with that command; and acknowledged it to be an act of great clemency in her majesty, that she carried her resentment no higher. So I think, that pious good queen is entirely acquitted by the archbishop himself.

All historians admit, that in his time the Puritans were very numerous, and their party very strong; and it is evident they grew so dangerous, that the statute of the 35th of Elizabeth was made to suppress their conventicles, and compel them to come to church. And at his death the affairs of the Church were in so great confusion, that his successor, archbishop Whitgift, was put to great trouble to check that growing faction, and reduce things into good order again. If therefore the Doctor was of opinion the Puritans received too great encouragement by the countenance of that great man, and if it was his zeal for the Church, and the resentment he had that it should receive any prejudice by the connivance of one at the head of it, that provoked him to use a harsh expression of that archbishop, it is humbly to be hoped that is not a sufficient ground for an impeachment of High Crimes and Misdemeanors.

The gentleman that spoke first to this Article, was pleased to admit, that what the Doctor said in relation to that archbishop, was not an offence, as it was a reflection on the archbishop; but that using such expressions of the archbishop for his moderation to the Puritans, was a reflection on the late Act of Toleration granted to Protestant Dissenters; and that calling the prosecutions against the prophesyings in queen Elizabeth's time 'wholesome severities,' is an encouragement to use such severities against the Protestant Dissenters now.

Can what was done in queen Elizabeth's time reflect on the Toleration? Can calling the prosecutions by queen Elizabeth against such as frequented conventicles against the law, and for which there was no Toleration; I say, can the calling such prosecutions 'wholesome severities,' reflect on this Toleration granted by law? Or can it encourage a prosecution against the Dissenters, who are entitled to the benefit of the Toleration, and are exempt from the penalties of the laws?

The only thing that can be inferred from what the Doctor says in relation to the 'wholesome severities,' is, That he intended to excite the magistrates to put the laws in execution against such Dissenters as were excepted out of the Act of Toleration; and I am at a loss to find how that can make him an offender. For surely the parliament never intended that any person should have the benefit of the Act of Toleration, that did not comply with the terms and conditions of it: and therefore, when the Doctor presseth the execution of the laws against such as are not entitled to the benefit of the act, he seems to me rather to vindicate than reflect upon the Toleration. Great offence hath been taken at the words 'wholesome severities' in the Doctor's Sermon; yet, my lords, I cannot think the word 'wholesome' an improper epithet for the severities used by queen Elizabeth against the Puritans; for faction was then in its infancy, schism did but just begin to disturb the Church; and by the seve-

rities of the laws that were put in execution, and the courage, learning and prudence of archbishop Whitgift, a stop was put to them. And, I presume, such severities as suppressed those bold and daring crimes in their infancy, may be called 'wholesome' without a catachresis; and can never be construed to be a suggestion, that the Toleration now granted by law is unreasonable, or the allowance of it unwarrantable.

As to that part of the second Article, which chargeth the Doctor with maintaining, That it is the duty of superior pastors to thunder out their ecclesiastical anathemas against persons entitled to the benefit of the Toleration: the Doctor humbly apprehends there is nothing in his Sermon can be a just foundation for that charge.

The Sermon hath this sentence, page 25, Let our superior pastors do their duty in thundering out their ecclesiastical anathemas; and let any power on earth dare reverse a sentence ratified in heaven. This is an entire and independent sentence, that doth not relate to any particular person, or any particular crimes, and does not mention the persons entitled to the benefit of the Toleration.

Nor can it be imagined, that he should desire anathemas to be thundered out against such persons who he wisheth may enjoy the Toleration in the full limits the law hath prescribed. But the anathemas must be intended to be against the works of darkness, atheism, profaneness, faction, and other enormous crimes which are mentioned in the preceding part of this Sermon, since it is not applied by him to any particular sins or offences.

The thundering anathemas, is declaring those judgments which are denounced in Scripture against sin. And he desires the superior pastors of the Church, to thunder out these anathemas, because the greater the authority is of the person, that declares these judgments, the greater influence they are like to have upon the persons guilty of such sins.

But if he had desired anathemas, or excommunications, (as they would infer) should be thundered out against Dissenters, yet it must be intended only against such as are not entitled to the benefit of the Toleration; and since the Act of Indulgence leaves such persons open to the laws, it cannot be a crime in the Doctor to press the execution of the laws against them.

For not to accept of the Toleration on the terms offered by the act, is what the Doctor calls hoisting the Toleration into an establishment, in despite of the act, and setting up a Toleration of their own in defiance of it.

As to the last part of the second Article, which charges, that the Doctor insolently dares and defies any power on earth to reverse such sentences, which sentences are there insinuated to be the sentences, or anathemas, given and thundered out by superior pastors; there are no such words in the Doctor's Sermon: for the Doctor's words are, Let any power on earth dare reverse a sentence ratified in heaven. So that the bare recital of the Doctor's expression, is a sufficient confutation of that part of the Article.

For if the judgments or anathemas denounced by superior pastors against sin, are such as are denounced against such sins in Scripture, such sentences may truly be said to be ratified in heaven; and if so, then no one can dare to think, that such sentences, so ratified in heaven, can be reversed by all the powers on earth united together: and therefore, the Doctor hopes it will not be thought insolence, or a high crime and misdemeanor in him, to assert what he conceived would be blasphemy in any one to deny. This is what I humbly offer to your lordships' consideration on this Article.

Mr. *Dee*. My lords, I humbly beg the favour of a few words on this Article. It is divided into three parts. The first is concerning Toleration; the charge against the Doctor is, that he has reflected on the Toleration as it is established by law. I crave leave to take notice, that on considering the whole Sermon, there are two distinct Tolerations mentioned in it; a Toleration that is legal, (for so I call the Act of Indulgence) and a Toleration that is general; and we think that distinction well observed, will clear the Doctor of any crime in this particular. Where he reflects on Toleration, it is not the legal Toleration, but the general; and if it will bear this construction, you will not put the other upon it; for where he has taken notice of a legal Toleration, (which he hath done only in one place of his Sermon) he is for extending it to the utmost bounds; his words are these: "I would not here be misunderstood, as if I intended to cast the least invidious reflection upon that indulgence the government hath condescended to give them; which I am sure all those that wish well to our Church, are very ready to grant to consciences truly scrupulous; let them enjoy it in the full limits the law hath prescribed." But where he speaks against Toleration, it is a Toleration of such enormous crimes, as are not fit to be tolerated in any Christian nation.

As to the second part of the Article, for reflecting on archbishop Grindall, and thereby reflecting on the Toleration, it was given up on the other side; and admitted, that whether true or false, it was not material, and then surely that will hardly amount to a crime. But, we shall be so far from giving up that point, that we shall shew he was false to the Church at that time; and it was a crime in him, to give up the discipline of the Church. No laws were then made to indulge any separation: and for the head of the Church under the queen, to give up the discipline of the Church was a high crime in him; and though it may be thought harsh, will bear the true term of a False Brother.

As to the third part of the Article, the thundering out anathemas, I would beg leave to read that part of the Doctor's Sermon, which, I hope, shall not be applied to those that are

within the legal Toleration. "Schism and faction are things of impudent and encroaching natures, they thrive upon concessions, take permission for power, and advance a Toleration immediately into an establishment:" (I hope the Dissenters will not take these characters on themselves:) "And are therefore to be treated like growing mischiefs or infectious plagues," &c. Presently after follows, "Let our superior pastors do their duty in thundering out their ecclesiastical anathemas, and let any power on earth dare reverse a sentence ratified in heaven." Now, my lords, I would beg leave to say, that this is only advice; and although the Doctor may be accounted pretty pert, to give advice to his superior pastors that they ought to thunder out anathemas; yet this cannot be construed to extend to them that are described in the Act of Toleration, those that could not conform to some ceremonials by reason of scrupulous consciences, these could not be called factious, but is meant of other people described in the Sermon. But if the Doctor had advised to thunder out anathemas against Dissenters (supposing, but not granting it) the question would come to this point, whether he was deceived in point of judgment or no: for, if they were schismatics before, the schism remains the same notwithstanding the Toleration; and if it was sin before the Act of Toleration, it is so still, notwithstanding the Act; and then his advice to the superior pastors, is, to do that which is (with submission) their duty to do, till prohibited by the temporal courts. My lords, I shall mention one case, that will shew you, that it is still schism to separate from the Church, and that it is the duty of Dissenters to communicate with the Church. That was the case of one Mr. Larwood: in Hilary term, sexto of king William, an information was exhibited against him, for refusing to take upon him the office of sheriff of the city of Norwich; he pleads he had not taken the sacrament in twelve-months; the attorney replied that he ought to have done it. He rejoins, that he was a Protestant Dissenter, and was excused by the Act of Toleration. There were two points in the case; the first was, whether it appeared by the information that the defendant was duly elected; the other, whether the plea in bar was good, (for the whole court held, that the rejoinder was a departure from the bar, and that the replication was insufficient;) so that judgment was to be given upon the information, and the plea in bar. Samuel Eyre, justice, was of opinion with the defendant as to both points; my lord chief justice Holt, and Mr. justice Giles Eyre were of opinion against him as to both points, and held the bar to be insufficient, because it was only excusing of one fault by another, which no man shall be admitted to do; and they held, that the duty of communicating with the Church remained notwithstanding the Act of Toleration: and I submit it to your lordships' consideration, whether, if it be a duty to communicate with the Church of England, it be not schism to separate from it.

My lords, I shall say no more to this Article, but submit it to your lordships.

Dr. *Henchman.* My lords, we are now endeavouring to defend Doctor Sacheverell against the charge contained in the second Article of Impeachment, in the two first clauses of which he is said to suggest and maintain, "That the Toleration granted by law is unreasonable, and the allowance of it unwarrantable: and to assert that he is a False Brother with relation to God, religion and the Church, who defends Toleration and Liberty of Conscience." But it has not been said by any of the learned managers on this head, that either of those two branches of this Article are expressly delivered in any part of the Sermon preached at St. Paul's; but what is no where affirmed, is said to be suggested, and this charge is maintained by inference only, because there is no plain positive proposition that it can be supported by.

My lords, it is humbly hoped, that if an inference may be allowed as proof to accuse him, an open declaration will be heard in his defence: if what another man makes him say be thought ground enough for an accusation, then certainly what he himself openly declares will be esteemed something more than a dry caution, and have its due weight with your lordships in his vindication. I would therefore beg leave to read a passage where he explains himself, and plainly declares what his thoughts are concerning the indulgence granted by law: this passage is in the 20th page, where speaking of some wholesome severities used in former reigns, he adds, "I would not here be misunderstood, as if I intended to cast the least invidious reflection upon that indulgence the government has condescended to give them, which I am sure all those that wish well to our Church are very ready to grant to consciences truly scrupulous; let them enjoy it in the full limits the law has prescribed."

My lords, these words are plain and express, and not capable of being misconstrued or misunderstood: Whether those learned gentlemen, who have applied some parts of this Sermon to purposes directly opposite to this plain declaration, have misunderstood or misconstrued those passages, must be submitted to your lordships' judgment; but it seems hardly reconcilable, that the same person in the same discourse should declare, that all who wish well to the Church are ready to grant indulgence to consciences truly scrupulous; and at the same time maintain, that such Toleration is unreasonable, and the allowance of it unwarrantable; that he should desire it may be enjoyed in its full latitude, and yet assert that he is a False Brother that defends it.

My lords, this seeming difficulty will be easily reconciled, by considering who those persons are who are designed to be eased by the Act of Exemption, and who the False Brethren are, described by Doctor Sacheverell in this Sermon.

That act, in the preamble, is said to be in-

tended for the Ease of scrupulous Consciences; one sort of the False Brethren, mentioned in the Sermon, are men of no conscience at all; whether Dissenters, or such as profess themselves with zeal to be of the established Church, but yet break her communion by not obeying her precepts.

That act was intended for such only, as qualify themselves according to the directions laid down in that act; the False Brethren which the Doctor every where speaks of are such, and such only, as neither qualify themselves according to that act, nor think themselves subject to the penalties of former acts.

This act was intended in favour of such as either subscribe the articles of religion, excepting only the thirty-fourth, thirty-fifth and thirty-sixth, some part of the twentieth, and that part of the twenty-seventh which relates to infant-baptism; or else for such as subscribe a profession of their Christian belief in these words; 'I profess faith in God the Father, and 'in Jesus Christ his Eternal Son the true God, 'and in the Holy Spirit, one God blessed for 'evermore; and do acknowledge the Holy 'Scriptures of the Old and New Testament to 'be given by divine inspiration.' These are the qualifications required of such as will intitle themselves to the benefit of this act.

On the other hand, the False Brethren described by Doctor Sacheverell, are Atheists, Deists, Tritheists, Socinians, Revilers of the Holy Scripture, and such like. Are not men of these opinions False Brethren, with relation to God and religion? Or shall such men be suffered to cover themselves under the protection of an act of parliament, designed only for the ease of scrupulous consciences. That there are men among us of these principles, will be but too visible, from a passage or two, which I beg leave to lay before your lordships from books lately published.

The first which I shall mention, is intitled, A Brief but Clear Confutation of the Trinity: If the title itself has not given too much offence to your lordships, I will proceed to look into the book itself; and in the ninth page there is this proposition laid down, The divinity attributed to the Son and Holy Ghost is unscriptural and idolatrous; and in page the tenth he goes on in these words, This one fundamental false principle, as well with Jews and Turks, as Heathens, has done more mischief to Christianity than all other errors besides. These are such barefaced blasphemies as must make every man's ears tingle that hears them; and the respect which is due to your lordships, and this assembly, makes me forbear instancing any thing more from this author: But he does not stand alone; out of many more of the like sort I shall mention but one only, and

This is a book, intitled, The Rights of the Christian Church; and the author in p. 108, lays down this doctrine:

"Among Christians one no more than another can be reckoned a priest." And a little after,

"The clerk has as good a title to the priesthood as the parson."

Thus, my lords, these two men strike off our whole religion at once; the fundamental doctrine of our faith is destroyed by the first of them; and the ministers, who are to support and defend that doctrine, are set aside by the other.

If these and such like opinions have any where prevailed, is it not high time that some wholesome severities were used to stop the growing contagion? Or, if the superior pastors of the Church should thunder out their ecclesiastical anathemas against the authors and abettors of such horrible blasphemies, by what construction can this be said to be done against persons intitled to the benefit of the Toleration?

But, my lords, there is one passage in this Sermon, which has been urged by the learned managers on this head with more than ordinary force, and as a direct breach and insult upon the Toleration; with your lordships' patience, I shall endeavour to set that passage in a true light. It is in the eighth page: "Should any one, out of ignorance and prejudice to the ancient rights and essential constitution of the Catholic Church, affirm, that the divine apostolick institution of episcopacy is a novel doctrine, not sufficiently warranted by Scripture, and that it is indifferent, whether the Church be governed by bishops or presbyters; is not such an one an apostate from his own orders?"

It was said, my lords, that all those Dissenters who do not acknowledge the divine right of episcopacy, and are therefore specially exempted by the Act of Indulgence from subscribing some of the articles of religion, and who are immediately under the protection of that act, are yet, in the end of this paragraph, charged with being False Brethren, where he prays, that God would deliver us from all such False Brethren.

But, my lords, it is plain, that these words are not meant, nor can be construed, generally of Dissenters, who deny the divine institution of episcopacy; but are intended peculiarly of such persons as have themselves been episcopally ordained; the first of these cannot be said to be apostates from that doctrine which they never owned, nor subscribed to; the latter, who could not be admitted to their orders till they had subscribed the received doctrine of our Church, are the only persons who can be said to be apostates from their own orders, if they deny that divine institution by which they themselves had been ordained, and consequently, the only persons that are intended in this passage, and termed False Brethren.

My lords, I shall not presume to say, what the duty of the superior pastors of the Church is, when our religion and discipline is invaded by Atheists and Schismatics, much less to determine what sentences justly passed by them on earth, may be ratified in heaven. Thus much I hope I may say without offence, that the spiritual power of Church-pastors, is not de-

rived from the civil magistrate, but from God; that one branch of that power is the censuring of notorious offenders, and excluding them from the communion of the Church; and that this has in all ages, in fact, and of right too, been exercised by the pastors of the Church, by permission of the civil magistrate. The reverend and learned bench of bishops well know, that before the the civil magistrate did embrace the Christian religion, the pastors of the Church did inflict spiritual censures on offenders, for doing such things as the imperial edicts did not only permit, but command; and this power of inflicting censures on persons exempted from punishment by the laws of the land, has been always challenged, and is now exercised by the reformed Churches abroad; and by the rubric of our own liturgy, open and notorious evil livers are to be repelled from the Lord's table, until they have openly declared their repentance and amendment.

We are told by the learned managers, that in case any ecclesiastical judge should inflict an illegal censure of excommunication, the temporal courts may, and would soon give relief, by sending forth a prohibition. But, your lordships will consider, that there is a wide and manifest difference betwixt an excommunication founded upon a prosecution in the ecclesiastical courts, and the pronouncing censures purely spiritual. The external coercive jurisdiction of ecclesiastical courts being derived from the laws of the land, may, and is frequently by those laws restrained; but such restraint does not hinder the pastors of the Church from exercising the spiritual power of the keys, which they derive not from the laws of the land, but from the institution of Christ; and therefore though it be provided in the Act of Exemption, that persons taking the oaths, and making the Declaration in that act mentioned, shall not be prosecuted in any ecclesiastical court for not conforming to the Church of England, yet it is not by that act expressed or intended that Non-Conformity to the established Church should no longer be looked upon as schism; or that separatists may not, by the pastors of the Church, be pronounced as schismatical. If separatists from the Church of England were guilty of schism before the Act of Exemption, they are as much guilty of it since; the laws of the land which require conformity, being not by that act repealed, though the transgressors of those laws are released from those pains and penalties to which they were before obnoxious: But were the laws of the land which require conformity to the Church of England expressly or virtually repealed; yet whilst the laws of God requiring Church-unity, and forbidding schism, are uncancelled, and remain in their full force, those who make causeless and unnecessary divisions are still guilty of schism, and may by the pastors of the Church be censured as such.

My lords, I shall add but one word in relation to archbishop Grindall, not to disturb his ashes, or blacken his character, but to vindicate the memory of that glorious queen, under whose displeasure he died.

It was said, my lords, That the true ground of that archbishop's suspension, was partly because he would not give up his manor of Lambeth to the earl of Leicester; and partly because he had censured one Julio, an Italian, for an illegal marriage. Had these been the known reasons of his suspension, he would have had just cause to complain loudly of that censure; but without entering into the secret history of that reign, I shall put the whole matter upon that archbishop's own sentiments, both as to the cause of his suspension, and the justice of it.

By the account which is yet extant under his own hand it appears, that there were in those days men of a fanatical spirit, that called themselves Prophesiers; that that archbishop had been ordered by the queen and council to suppress such exercises within his province, as contrary to the laws of the land, and the established discipline of the Church; but this archbishop thought fit not only to delay, but absolutely to refuse to join in suppressing those exercises; and for this disobedience to the lawful commands of his sovereign he was suspended.

My lords, his own words which he uses upon this occasion are very remarkable, when he applies to the council to intercede with her majesty to be restored to her gracious favour, viz.

"And whereas I have sustained the restraint of my liberty, and the sequestration of my jurisdiction, now by the space of six months; I am so far from repining thereat, or thinking myself injuriously or hardly dealt withal therein at her majesty's hands, that I do thankfully embrace, and frankly, with all humility, acknowledge her princely and gracious care and clemency towards me, who having authority and power to have used greater and sharper severity against me, and for good policy and example thinking it so expedient, hath notwithstanding dealt so mercifully, mildly and gently with me."

My lords, in this letter that archbishop frankly acknowledges that he had given offence, and was, for good policy and example, justly punished by her majesty; but had it been known that he was suspended for not tamely parting with the revenues of his see, or for pronouncing a sentence in a court of justice against an unlawful marriage, there could have been no reason for him to have acknowledged the justice of his suspension; neither could it be for good policy and example expedient, that he should be punished for not alienating the revenues of his Church, or for not pronouncing Julio's marriage with another man's wife lawful.

Mr. *Dodd.* We shall spend a little of your lordships' time in reading to this head; we shall only read the Toleration Act, to shew the exception in it; and offer the archbishop's let-

ter to the council; and the queen's letter to the bishops. We have the letters of Calvin and Beza; but I believe we shall not have occasion to read them, but only the other three. The first is the Act of Toleration.

Clerk reads.] "Anno Primo Gulielmi et Mariæ. An Act for exempting their majesty's Protestant subjects, dissenting from the Church of England, from the penalties of certain laws."

"Forasmuch as some ease to scrupulous consciences in the exercise of religion, may be an effectual means to unite their majesties Protestant subjects in interest and affection,

"Be it enacted by the king and queen's most excellent majesties, by and with the advice and consent of the Lords spiritual and temporal, and the Commons in this present parliament assembled, and by the authority of the same, that neither the statute made in the 23d year of the reign of the late queen Elizabeth, intitled, 'An Act to retain the queen's majesty's subjects in their due obedience:' Nor the statute made in the 29th year of the said queen, intitled, 'An Act for the more speedy and due execution of certain branches of the statute 'made in the 23d year of the queen's majesty's 'reign,' viz. the aforesaid Act; nor that branch or clause of a statute made in the 1st year of the reign of the said queen, intitled, 'An Act for the uniformity of common prayer, 'and service in the Church, and administration 'of the sacraments;' whereby all persons having no lawful or reasonable excuse to be absent, are required to resort to their parish church or chapel, or some usual place where the common prayer shall be used, upon pain of punishment by the censures of the Church, and also upon pain that every person so offending shall forfeit for every such offence 12*d.*: Nor the statute made in the 3d year of the reign of the late king James the 1st, intitled, 'An Act for the 'better discovering and repressing Popish re-'cusants:' Nor that other statute made in the same year, intitled, 'An Act to prevent and 'avoid dangers which may grow by Popish 'recusants:' Nor any other law or statute of this realm made against Papists or Popish recusants, except the statute made in the 25th year of king Charles the 2d, intitled, 'An Act 'for preventing dangers which may happen 'from Popish recusants;' and except also the statute made in the 30th year of the said king Charles the 2d, intitled, 'An Act for the more 'effectual preserving the king's person and 'government, by disabling Papists from sitting 'in either House of Parliament;' shall be construed to extend to any person or persons dissenting from the Church of England, that shall take the oaths mentioned in a statute made in this present parliament, intitled, 'An Act for 'removing and preventing all questions and 'disputes concerning the assembling and sitting of this present parliament:' And shall make and subscribe the declaration mentioned in a statute made in the 30th year of the reign of king Charles the 2d, intitled, 'An Act to 'prevent Papists from sitting in either House 'of Parliament.' Which oaths and declaration, the justices of peace at the general sessions of the peace to be held for the county or place where such person shall live, are hereby required to tender and administer to such persons as shall offer themselves to take, make, and subscribe the same, and thereof to keep a register. And likewise none of the persons aforesaid, shall give or pay as any fee, or reward to any officer, or officers belonging to the court aforesaid, above the sum of 6*d.*, nor that more than once, for his or their entry of his taking the said oaths, and making and subscribing the said declaration. Nor above the further sum of 6*d.* for any certificate of the same to be made out, and signed by the officer or officers of the said court.

"And be it further enacted by the authority aforesaid, that all and every person and persons already convicted, or prosecuted in order to conviction of recusancy, by indictment, information, action of debt, or otherwise, grounded upon the aforesaid statutes, or any of them, that shall take the said oaths mentioned in the said statute made this present parliament, and make and subscribe the declaration aforesaid, in the court of Exchequer, or assizes, or general or quarter sessions to be held for the county where such person lives, and to be thence respectively certified into the Exchequer, shall be thenceforth exempted and discharged from all the penalties, seizures, forfeitures, judgments and executions, incurred by force of any the aforesaid statutes, without any composition, fee, or further charge whatsoever.

"And be it further enacted by the authority aforesaid, that all and every person and persons that shall, as aforesaid, take the said oaths, and make and subscribe the declaration aforesaid, shall not be liable to any pains, penalties, or forfeitures, mentioned in an Act made in the 35th year of the reign of the late queen Elizabeth, intitled, 'An Act to retain the 'queen's majesty's subjects in their due obe-'dience:' Nor in an Act made in the 32nd year of the reign of the late king Charles the second, intitled, "An Act to prevent and suppress seditious conventicles." Nor shall any of the said persons be prosecuted in any ecclesiastical court, for or by reason of their nonconforming to the Church of England.

"Provided always, and be it enacted by the authority aforesaid, that if any assembly of persons, dissenting from the Church of England, shall be had in any place for religious worship, with the doors locked, barred or bolted, during any time of such meeting together, all and every person or persons that shall come to and be at such meeting, shall not receive any benefit from this law, but be liable to all the pains and penalties of all the aforesaid laws recited in this Act for such their meeting, notwithstanding his taking the oaths, and his making and subscribing the declaration aforesaid.

"Provided always, that nothing herein contained shall be construed to exempt any of the

persons aforesaid from paying of tythes or other parochial duties, or any other duties to the church or minister; nor from any prosecution in any ecclesiastical court or elsewhere for the same.

"And be it further enacted by the authority aforesaid, that if any person dissenting from the Church of England, as aforesaid, shall hereafter be chosen or otherwise appointed to bear the office of high constable, or petit constable, church-warden, overseer of the poor, or any other parochial or ward-office, and such person shall scruple to take upon him any of the said offices in regard of the oaths, or any other matter or thing required by the law to be taken or done in respect of such office, every such person shall and may execute such office or employment by a sufficient deputy, by him to be provided, that shall comply with the laws on this behalf.

"Provided always, the said deputy be allowed and approved by such person or persons, in such manner as such officer or officers respectively should by law have been allowed and approved.

"And be it further enacted by the authority aforesaid, that no person dissenting from the Church of England, in holy orders, or pretended holy orders, or pretending to holy orders, nor any preacher or teacher of any congregation of Dissenting Protestants, that shall make and subscribe the declaration aforesaid, and take the said oaths at the general or quarter-sessions of the peace, to be held for the county, town, parts or division where such person lives; which court is hereby impowered to administer the same; and shall also declare his approbation of, and subscribe the Articles of Religion, mentioned in the statute made in the 13th year of the reign of the late queen Elizabeth, except the 34th, 35th, and 36th, and these words of the twentieth Article, viz. ['The 'Church hath power to decree rites or cere-'monies, and authority in controversies of 'faith,'] and yet shall be liable to any of the pains or penalties mentioned in an Act made in the 17th year of the reign of king Charles 2, intitled, 'An Act for restraining nonconformists 'from inhabiting in corporations;' nor the penalties mentioned in the aforesaid Act made in the 22nd year of his said late majesty's reign, for or by reason of such persons preaching at any meeting for the exercise of religion; nor to the penalty of 100*l.* mentioned in an Act made in the 13th and 14th of king Charles 2, intitled, 'An Act 'for the uniformity of public prayers, and 'administration of sacraments, and other rites 'and ceremonies; and for establishing the 'form of making, ordaining, and consecrat-'ing of bishops, priests, and deacons in the 'Church of England,' for officiating in any congregation for the exercise of religion, permitted and allowed by this Act.

"Provided always, That the making and subscribing the said declaration, and the taking the said oaths, and making the declaration of approbation and subscription to the said Articles, in manner as aforesaid, by every respective person and persons herein before-mentioned, at such general or quarter-sessions of the peace as aforesaid, shall be then and there entered of record in the said court, for which 6*d.* shall be paid to the clerk of the peace, and no more.

"Provided, That such person shall not at any time preach in any place, but with the doors not locked, barred or bolted as aforesaid.

"And whereas some Dissenting Protestants scruple the baptizing of infants; be it enacted by the authority aforesaid, that every person in pretended holy orders, or pretending to holy orders, or preacher or teacher, that shall subscribe the aforesaid Articles of Religion, (except before excepted, and also except part of the 27th Article, touching Infant Baptism) and shall take the said oaths, and make and subscribe the declaration aforesaid, in manner aforesaid, every such person shall enjoy all the privileges, benefits and advantages, which any other Dissenting minister, as aforesaid, might have or enjoy by virtue of this Act.

"And be it further enacted by the authority aforesaid, that every teacher or preacher in holy orders, or pretended holy orders, that is, a minister, preacher, or teacher of a congregation, that shall take the oaths herein required, and make and subscribe the declaration aforesaid, and also subscribe such of the aforesaid Articles of the Church of England, as are required by this Act in manner aforesaid, shall be thenceforth exempted from serving upon any jury, or from being chosen or appointed to bear the office of church-warden, overseer of the poor, or any other parochial or ward-office, or other office in any hundred, of any shire, city, town, parish, division or wapentake.

"And be it further enacted by the authority aforesaid, That every justice of the peace may at any time hereafter require any person, that goes to any meeting for exercise of religion, to make and subscribe the declaration aforesaid, and also to take the said oaths, or declaration of fidelity herein-after mentioned, in case such person scruples the taking of an oath; and upon refusal thereof, such justice of the peace is hereby required to commit such person to prison without bail or mainprize; and to certify the name of such person to the next general or quarter sessions of the peace to be held for that county, city, town, part or division where such person then resides: and if such person so committed, shall, upon a second tender at the general or quarter sessions, refuse to make and subscribe the declaration aforesaid, such person refusing shall be then and there recorded; and he shall be taken thenceforth, to all intents and purposes, for a Popish recusant convict, and suffer accordingly, and incur all the penalties and forfeitures of all the aforesaid laws.

"And whereas there are certain other persons, Dissenters from the Church of England who scruple the taking of any oath; be it en-

acted by the authority aforesaid, That every such person shall make and subscribe the aforesaid declaration, and also this declaration of fidelity following; viz.

"I A. B. do sincerely promise, and solemnly declare before God and the world, that I will be true and faithful to king William and queen Mary; and I do solemnly profess and declare, that I do from my heart abhor, detest and renounce, as impious and heretical, that damnable doctrine and position, That princes excommunicated, or deprived by the Pope, or any authority of the see of Rome, may be deposed or murdered by their subjects, or any other whatsoever. And I do declare, That no foreign prince, person, prelate, state or potentate, hath, or ought to have, any power, jurisdiction, superiority, pre-eminence or authority, ecclesiastical or spiritual, within this realm.

"And shall subscribe a profession of their Christian belief, in these words:

"I A. B. profess faith in God the Father, and in Jesus Christ his Eternal Son, the true God, and in the Holy Spirit, one God blessed for ever-more; and do acknowledge the Holy Scriptures of the Old and New Testament to be given by divine inspiration.

"Which declarations and subscriptions shall be made, and entered of record, at the general or quarter sessions of the peace for the county, city or place, where every such person shall then reside. And every such person that shall make and subscribe the two declarations and profession aforesaid, being thereunto required, shall be exempted from all the pains and penalties of all and every the afore-mentioned statutes made against Popish recusants, or Protestant non-conformists; and also from the penalties of an Act made in the fifth year of the reign of the late queen Elizabeth, entitled, 'An 'Act for the Assurance of the Queen's Royal 'Power, over all Estates and Subjects, within 'her Dominions;' for or by reason of such persons not taking, or refusing to take the oath mentioned in the said act; and also from the penalties of an act made in the 13th and 14th years of the reign of king Charles 2d, entitled, 'An Act for preventing Mischiefs that may 'arise by certain Persons (called Quakers) re-'fusing to take lawful Oaths;' and enjoy all other the benefits, privileges and advantages, under the like limitations, provisoes and conditions, which any other Dissenters shall, or ought to enjoy by virtue of this Act.

"Provided always, and be it enacted by the authority aforesaid, That in case any person shall refuse to take the oaths, when tendered to them, which every justice of the peace is hereby empowered to do, such person shall not be admitted to make and subscribe the two declarations aforesaid, though required thereunto, either before any justice of the peace, or at the general or quarter sessions, before or after any conviction of Popish recusancy, as aforesaid, unless such person can, within 31 days after such tender of the declarations to him, produce two sufficient Protestant witnesses, to testify upon oath, that they believe him to be a Protestant Dissenter, or a certificate under the hands of four Protestants who are conformable to the Church of England, or have taken the oaths, and subscribed the declaration abovementioned; and shall also produce a certificate under the hands and seals of six, or more, sufficient men of the congregation to which he belongs, owning him for one of them.

"Provided also, and be it enacted by the authority aforesaid, That until such certificate under the hands of six of his congregation (as aforesaid) be produced, and two Protestant witnesses come to attest his being a Protestant Dissenter, or a certificate under the hands of four Protestants (as aforesaid) be produced, the justice of the peace shall, and hereby is required to take a recognizance with two sureties, in the penal sum of 50*l.* to be levied of his goods and chattels, lands and tenements, to the use of the king and queen's majesties, their heirs and successors, for his producing the same; and if he cannot give such security, to commit him to prison, there to remain until he has produced such certificates, or two witnesses, as aforesaid.

"Provided always, and it is the true intent and meaning of this Act, That all the laws made and provided for the frequenting of divine service on the Lord's Day, commonly called Sunday, shall be still in force, and executed against all persons that offend against the said laws; except such persons come to some congregation, or assembly of religious worship, allowed or permitted by this Act.

"Provided always, and be it further enacted by the authority aforesaid, That neither this Act, nor any clause, article, or thing herein contained, shall extend, or be construed to extend, to give any ease, benefit or advantage to any Papist or Popish recusant whatsoever; or any person that shall deny, in his preaching or writing, the doctrine of the blessed Trinity, as it is declared in the aforesaid Articles of Religion.

"Provided always, and be it enacted by the authority aforesaid, That if any person or persons, at any time or times after the 10th day of June, do and shall, willingly and of purpose, maliciously or contemptuously, come into any cathedral or parish church, chapel, or other congregation permitted by this Act, and disquiet or disturb the same, or misuse any preacher or teacher, such person or persons, upon proof thereof before any justice of peace, by two or more sufficient witnesses, shall find two sureties, to be bound by recognizance in the penal sum of 50*l.*; and in default of such sureties shall be committed to prison, there to remain till the next general or quarter sessions; and upon conviction of the said offence at the said general or quarter sessions, shall suffer the pain and penalty of 20*l.* to the use of the king and queen's majesties, their heirs and successors.

"Provided always, That no congregation or assembly for religious worship, shall be per-

mitted or allowed by this Act, until the place of such meeting shall be certified to the bishop of the diocese, or to the archdeacon of that archdeaconry, or to the justices of the peace, at the general or quarter sessions of the peace for the county, city, or place in which such meeting shall be held, and registered in the said bishop's or archdeacon's court respectively, or recorded at the said general or quarter sessions; the register or clerk of the peace whereof respectively, is hereby required to register the same; and to give certificate thereof to such person as shall demand the same, for which there shall be no greater fee, or reward taken, than the sum of sixpence."

Mr. *Dodd.* The next is the queen's Letter to the Bishops: we have it from the Cotton Library, and a person here, that has the custody of it, and proves it a true copy.

Then Mr. *Rawlinson* was sworn.

Mr. *Dodd.* Pray, give my lords an account, whether you examined that paper? and where? and whether it be a true copy?

Rawlinson. I examined it in the Cotton Library, and (errors excepted) I believe it a true copy.

Mr. *Dodd.* Do you believe it to be a true copy?—*Rawlinson.* Yes, I do believe it.

Clerk reads.] "A Letter from the Queen's Majesty, sent to the Bishops through England, for the suppressing of the Exercise called Prophecyeing." (Cotton Library, Cleopatra, F. 2, fol. 287, 288, 289.)

"Right reverend Father in God, We greete you well. We hear to our great griefe, that in sundry parts of our realme there are no small numbers of persons presuming to be teachers, and preachers of the Church, though neither lafulie thereunto called, nor yet for the same, which contrary to our laws established for the publique devine service of Almightie God, and the administration of his holie sacreement within this Church of England, doe dailie devise, imagine, propound and put in execution sundrie new rites and forms in the Church, as well by their preaching, readings, and ministring the sacraments, as well by procureing unlawful assemblies of a great number of our people out of either their ordinary parishes, and from place far distant; and that also of some of good will, calling (though therein not well advised) to be hearers of their disputations, and new devised opinions upon points of devinities, farre and unmeete of unlarge people; which manner of invasions they in some places call phrophesiings, and in some other places exercises. By which manner of assemblies great numbers of our people, especially the vulgar sort, meete to be otherwise ouccupied with honest labour for their livinge, are brought to idleness and seduced, and in a manner schismatically devided amongst themselves into varietie of dangerous opinions, not only in towns and parishes, but even in some families; and manifestly thereby incorraged to the violation of our laws, and to the breach of common order, and finalie to the offence of all our quiet subjects that desire to serve God according to the uniforme orders established in the Church, whereof the sequele cannot but over dangerous to be suffered. Wherefore, considering it should be the duty of the bishops, being the principal ordinary officers in the Church of God, as you are one, to see this dishoners against the honour of God and the quietness of the Church reformed: And that we see that by the increase of these, through sufferance, great danger may ensue even to the decay of the Cristianne Faithe, whereof we are by God appointed the defendor; besides the other inconveniences, to the disturbance of our peaceable government. We therefore, according to authoritie we have, do charge and command you, as the bishopp of that diocesse, with all manner of diligence, to take order through your diocesse, as well in places exempt, as otherwise; that no manner of publique and devine service, nor other form of the administration of the Holy sacraments, nor any other rightes or ceremonies be in any sort used in the Church, but directlie according to the orders established by our laws. Nether that any manner of person be suffred within your diocesse to preach, teach, read or exercise any function in the Church, but such as shall be lawfully approved and licensed, as persons able for their knowledge, and conformable to the ministrie in the rites and ceremonies of the Church of England. And where there shall not be sufficient able persons for learning in any cures, to preach or instruct their cures as were requiset, there shall you lymitte the curates to read the publique homlines, according to the injunctions heretofore by us given for like causes: And furthermore considering, for the great abuse that have byn in sundrie places of our realme, by reason of our forsaid assemblies called exercises, and for that the same are not, nor have not been appointed nor warranted by us or by our laws, we will and straightlie charge you, that you do charge the same forthwith to cease, and not to be used: But if any shall attempt, or continew or renew the same, we will you not onlie to committe thereunto prison, as maynteyners of disorders, but also to advertise us or our counsaile of the names and qualities of them, and of their mayntainers and abbettors, that thereupon for better example their punishment may be more sharp for their reformation. And in these things we charge you to be so careful and villiant, as by your negligence if we should hear of any person attempting to fend in the premisses without your correccion or information to us, we be not forced to make some example or reformation of you, according to your deserts."

"Given under our signet, at the manner of Greenwich, the 7th of May, 1577."

Mr. *Phipps.* Your lordships observe, this is a letter from queen Elizabeth to the bishops, taking notice of the danger that might arise from

the prophesyings, and directs them to take care to suppress those unlawful assemblies; and now we will read to your lordships the letter from the archbishop to the council, wherein he tells them, that he could not comply with her majesty's command.

Clerk reads.] "To the Lords of the Privy Council.—Right honourable and my singuler good lords, I cannot deny but that I have been commanded both by the quenes majestie herself, and also by divers of your honorable lordships in her name, to suppresse all those exercises within my province, that are commonly called prophesies; but I do protest before God, the judge of all hartes, that I did not of any stubbernness or wilfulness refuse to accomplish the same, but onlye upon conscience; for that I found such kind of exercise set down in the holie scriptures, and the use of the same to have contynued in the primitive Church, and was perswaded that (the abuses being reformed which I always offered myself ready to labour in) the said exercise might yet serve to the great profit of the Church, and feared that the utter suppressing of them would bread offence, and therefore was a most humble suter unto her majestie, that I might not be made the chiefe instrument in suppressing the same: Yet not prejudicing or condemning any that in respect of pollicie or otherwise should be of contrary judgment, or being of authority, should suppress them: For I know right well, that there be some things of that nature, wherein diverse men may be of diverse opinions, and abound in their owne sense, (being not repugnant to the analogie of faith) without any prejudice to their salvation, or any prejudice of ether to other. Notwithstanding however others being otherwise perswaded, might safely do yt; yet I thought it not safe for me (being so perswaded in minde) to be the doer of that whereof my own heart and conscience would condemn me. And whereas I have susteyned the restraint of my libertie and sequestration of my jurisdiction nowe by the space of six monethes, I am so farre from repininge thereat, or thinkinge myself injuriously or hardlie dealt withal therein at her majesties' hands, that I do thankfully embrace, and franklie, with all humilite, acknowledge her princely, gracious, and rare clemencie towards me, who having authoritie and power to have used greater and sharper severitie againste me, and for good policie and example thinking it so expedient, hath notwithstanding dealt so mercifullie, myldelye, and gentlie with me. But the greatest griefe that ever I have had or have, is the loss of her majesties' favour, and the susteyninge of the displeasure of so gracious a soveraigne, by whom the Church and realm of Englande hath been so longe and so happilie governed; and by whom myself privatelie and speciallie above other subjects have received so many and so great benefitts above all my deservings, for the recovery of whose gracious favour, I most humbly beseech your lordships to be a meanes to her majestie for me: The which obteyned, I shall esteme far above all worldly benefits whatsoever. And I protest here before God and your honours, that not onely my dewtifull and humble obedience to her majestie shall be suche, as she shall have no cause to repente her of her graciouse goodness and clemencie shewed unto me; but also that by moste fervente, heartie, and dailie prayer (as I have done hitherto) so I will contynew, accordinge to my bownden dewtie, to make moste earneste sute unto Almightie God for the longe preservation of her majesties most happy raigne, to the unspeakable benefitt of the Church and realm of England, &c.

Novemb. 29, 1577. EDM. CANTUAR."

Mr. *Dodd.* We hope these two letters have set that matter in a true light, that the reason of the archbishop's disgrace was, for not complying with the commands of the queen. We will add no more upon this Article, but proceed to the third.

Mr. *Phipps.* My lords, the dates of these letters are material; for your lordships take notice, they were written in the year 1577; and her majesty's commands for suppressing the prophesyings not being obeyed, the Puritans in few years became so dangerous, that the parliament was necessitated to make the act of the 35th year of her reign, (with those severe penalties, which have been so much censured by one of the learned managers) to give a check to them.

Mr. *Dodd.* My lords, the third Article that the Doctor is charged with, is, That "he does suggest and assert, that the Church of England is in a condition of great peril and adversity under her majesty's administration; and that, in order to arraign and blacken the Vote or Resolution of both Houses of Parliament, approved by her majesty, he, in opposition thereto, does suggest the Church to be in danger." And, my lords, this we take the liberty totally to deny: the Doctor asserts no such thing in his Sermon, nor hath it, as we apprehend, been proved upon him.

But true it is, that he asserts, that when national sins are ripened to maturity, with other immoralities and irreligious practices therein-mentioned, then such a people and Church are in very great danger, as we apprehend, from the sins and vices of wicked men. My lords, this we conceive no ways to be opposite to the Votes of the two Houses of Parliament, nor to her majesty's Declaration: we think we have followed the Act of Parliament of the 9th and 10th of king William, for suppressing Blasphemy and Profaneness, and other acts of parliament, in asserting this matter. It must be agreed, that the Church, as a Church militant, is always in danger, till it is a Church triumphant: it is always taken notice so to be; she has many enemies; she ought to be always on her guard and watch, and all good people ought to pray for her support. The prayers directed by her majesty

to be used, and that are used in all churches, are, "That no sedition may disturb the state, nor schism distract this Church;" and that we all ought to lay it to heart, how great dangers we are in by our unhappy divisions: these are the prayers that are put up every day in the churches. Now to object from this, that we look on the Church to be in danger under her majesty's administration, is so directly contrary to what the Doctor has asserted in his Sermon, wherein he does, as a good and loyal subject, pray, and pray heartily for the best of queens, "That she may long live for the comfort and support of this Church and Nation;" after this, one would think when he has so positively laid it down in plain words, there could be no ground to quarrel with him on this head. And as to that which was urged by one of the gentlemen managers for the House of Commons, observing that the Doctor's expressions were taken out of the Lamentations, and that when the Lamentations were written, the king was a prisoner, and the people in captivity; and therefore the Doctor intended the parallel to answer the present times; surely no such inference can be drawn from these passages: I hope the people are in no captivity whatsoever; nor is our queen (blessed be God) a prisoner. And if it was intended by the gentleman manager, (as I suppose it was) that the Doctor herein meant the Pretender; the Doctor utterly denies it, and has all along disclaimed his right, and asserted her majesty's right in very express terms. But in this place cited by the Doctor, is represented the prophet's lamentation for the sins of the people, and the judgments that had overtaken the Jews for their sins and rebellion. The like prayers may be observed to have been made by king David, and yet the Church of the Jews was in the greatest prosperity in his time: however, there is scarce a Psalm but he laments the sins of the people, for fear lest they should bring down judgments on the Jewish Church and State. This is pathetically expressed almost throughout all the Psalms.

As to the allegation, that "the members of both Houses were conspiring the ruin of the Church," he totally denies it; nor has the Doctor, in all his Sermon, mentioned the Votes of the two Houses: therefore for the Article to charge the Doctor with asserting, "That the members of both Houses, who passed the Vote relating to the danger of the Church, were conspiring her ruin, when they voted her out of danger, is a mistaken fact. That Vote was almost four years ago. There could be no reason to think he reflected on that Vote; nor is there any thing that can induce your lordships (as we humbly apprehend) in the Doctor's Sermon, to believe such a charge. The passage in the Doctor's Sermon relates to the wars in the late times: and as in those days there were many ill men, and God permitted them to bring their ill designs about, so it is plain, that there were many good men innocent, as my lord Clarendon expresses it, that had no such ill designs. Now, when your lordships and the Commons passed that Vote, no doubt it was a just Vote, and gave a great satisfaction: but nobody could expect that passage to be turned on the Doctor as a reflection on your lordships, the Commons, and her majesty, in relation to that Vote. But what he reflects upon is quite another thing: he takes notice, that the Church is in danger from evil men, from evil practices, and evil books that are daily published. We hope your lordships will not take it, that when we urge this, we intend to reflect either on the pastors of the Church, or the ministry of the queen; for it would be hard that they should be answerable for all those pamphlets. But when such are published to poison the notions of the people, and a minister in the pulpit takes notice of them, to prevent the ill consequences of them; whether this can have such a construction as has been contended for, we may safely submit to your lordships. The now asserting the Christian faith to be in danger by vice and irreligion, cannot be contrary to the Votes in the Articles alleged, nor affect him, who makes the assertion, with any crime, or (as we think) subject him to any punishment.

My lords, we shall be the shorter in opening this Article, because we fear we shall be very long in our evidence upon this head; we shall produce and give in evidence several books that daily come out, which contain the highest blasphemy, irreligion and heresy that can be published. I will not take upon me to open them, they are so horrid, I leave the passages to be read, that your lordships may see what grounds there are for a preacher in the pulpit to take notice of these matters. When the Church is run down, the clergy vilified; when they tell us a grey coat has as much authority to administer the Sacrament as a black coat; and that a country-man may make as good a priest as the parson of the parish: these things may excuse the zeal of the Doctor in so warmly reprehending them.

We shall read abundance of this sort of learning, and we shall do it only to shew, that there was reason for the Doctor in the pulpit to forewarn the people, to caution that they may not have ill impressions made upon them, by such wicked and scurrilous writings. We shall humbly offer our evidence to your lordships, and then submit this Article.

Mr. *Phipps*. My lords, I am now to speak to the third Article exhibited by the Commons of Great Britain against Dr. Sacheverell: and I humbly beg your lordships' patience, while I take notice of the several branches of this Article, and shew your lordships, that the Doctor is not guilty of any offence thereby charged.

As to such part of this Article as charges the Doctor, "That he doth falsly and seditiously suggest and assert, that the Church

England is in a condition of great peril and adversity under her majesty's administration; and that to arraign and blacken the Vote and Resolution of both Houses of Parliament, approved by her majesty, be, in opposition thereto, doth suggest the Church to be in danger:"

I beg leave to take notice, that the first part of the fourth Article explains this branch of the third Article, and shews what the Commons meant by the Church being in danger under her majesty's administration: for the first part of the fourth Article says, That "the Doctor suggests, that her majesty's administration in ecclesiastical and civil affairs tends to the destruction of the constitution." So that by charging that the Doctor asserts the Church is in danger under her majesty's administration, it must be intended that he asserts the Church to be in danger by reason of her majesty's administration. And therefore, if there be any expression in the Doctor's Sermon which suggests the Church to be in danger; yet if it be not also therein asserted that the danger proceeds from her majesty's administration, the Doctor cannot be an offender within the meaning and intention of this Article: and the Doctor denies, that he hath asserted any thing in his Sermon, from whence any such suggestion can be inferred.

To give your lordships full satisfaction in this point, I shall first take notice of the several clauses in the Doctor's Sermon at St. Paul's, which have been cited to make good this Article.

The first passage quoted for this purpose, is in page the 5th, where the Doctor thus expresseth himself: "I shall take the expression in its full latitude, without confining it to the express design of the place, though it were very obvious to draw a parallel here betwixt the and circumstances of the Church of Corinth formerly, and of the Church of England at present; wherein her Holy Communion has been rent and divided by factious and schismatical impostors; her pure doctrine has been corrupted and defiled; her primitive worship and discipline prophaned and abused; her sacred orders denied and vilified; her priests and professors (like St. Paul) calumniated, misrepresented and ridiculed; her altars and sacraments prostituted to Hypocrites, Deists, Socinians and Atheists; and this done, I wish I could not say, without discouragement, I am sure with impunity, not only by our professed enemies, but, which is worse, by our pretended friends and false brethren."

This is the passage which is chiefly insisted on to make good this branch of the Article. My lords, is there not too much truth in this clause? Hath not the Communion of the Church been rent and divided by some factious and schismatical teachers in separate congregations, who have no orders at all; and by others who refuse to take the oaths, and will not comply with the Act of Toleration; by Popish priests, who have drawn away persons from our Communion to their Church? Have not her sacred orders been denied and vilified by the Papists, who pretend archbishop Parker was consecrated at the Nag's-head? Are not her altars and sacraments prostituted to Atheists, Deists and Socinians, who communicate to qualify themselves for offices and places of trust; and yet, is there any thing in this clause can support this Article? Are these evils charged upon her majesty? or is it asserted, that these mischiefs are owing to, or proceed from, her majesty's administration?

The next paragraph cited to maintain this Article, is in the 14th page, where the Doctor says, "In short, as the English government can never be secure on any other principles, but strictly those of the Church of England; so I will be bold to say, where any part of it is trusted in persons of any other notions, they must be false to themselves, if they are true to their trusts; or if they are true to their opinions and interest, must betray that government they are enemies to upon principle. Indeed, we must do them that justice, to confess, that since the Sectarists have found a way (which their fore-fathers, God knows, as wicked as they were, would have abhorred) to swallow not only oaths, but sacraments, to qualify themselves to get into places and preferments; these sanctified hypocrites can put on a shew of loyalty, and seem tolerably easy in the government, if they can ingross the honours and profits of it: but let her majesty reach out her little finger to touch their loins, and these sworn adversaries to Passive Obedience, and the royal family, shall fret themselves, and curse their queen and their God, and shall look upwards."

Here is not one word of the Church being in danger by her majesty's administration: he only shews the danger the English government may be in by occasional conformists put into offices and places of trust. For Occasional Conformists, who are Dissenters, Republicans, Atheists and Deists, that communicate only to qualify themselves for places, if they are true to their opinions, cannot be true to the Church of England in which they communicate, cannot be true to the government by which they are entrusted in such offices; for they will be always promoting their own principles in religion, and their own forms of government in the state.

Both Lords and Commons were of opinion, it was not safe to trust Occasional Conformists with the guardianship of our Church or Crown, when they agreed to the Bill for preventing Occasional Conformity, which enacts, "That if any person, who had any office civil or military, or any command or place of trust under her majesty; or if any person bearing any office of magistracy, or place of trust in corporations, who by the laws are obliged to receive the sacrament of the Lord's Supper, according to the rites and usage of the Church of England, should, after their admission into their respective offices, and during their con-

tinuance in such offices, resort unto any conventicle, assembly or meeting, under colour or pretence of any exercise of religion, in any other manner than according to the liturgy and practice of the Church of England, they should, being convicted thereof, be disabled from henceforth to hold such office or offices." Though this was never enacted into a law, yet as it was the opinion of both Houses of Parliament, I beg leave to offer it as a reason, to confirm what the Doctor hath asserted.

My lords, I shall trouble your lordships only with one passage more, which was urged to prove this Article, which is in page the 15th, where the Doctor hath these words: "To lay before you the great peril and mischiefs of these False Brethren in Church and State; which I shall endeavour to do, by proving that they weaken, undermine, and betray in themselves, and encourage, and put it into the power of our professed enemies, to overturn and destroy the constitution and establishment of both." These False Brethren are the Occasional Conformists mentioned in the page preceding.

I heartily wish, that all who communicate in the Church, were true sons of the Church; but if, as the Doctor suggests, there are any that communicate at her altars, who disown her mission, who refuse to comply with her liturgy, and are enemies to her constitution; if Arians, Socinians, Deists, and almost all Dissenters, and other enemies to the Church, communicate with her to get places and preferments in Church and State, what prejudice the Church may receive from such False Brethren, I submit to your lordships' judgment; begging leave only to offer to your lordships, what was said by the Commons at a conference with your lordships, upon the Bill for preventing Occasional Conformity; and which, I hope, in an impeachment by the Commons, will have some weight with your lordships.

The Commons upon that conference were pleased to take notice, "That when the Corporation-Act was made, the parliament had fresh in their minds the confusions and calamities that had been brought upon the nation, by such as pretended to be at the same time in the true interest of religion and their country. That the parliament by that Act, and afterwards by the Test-Act, thought they had secured our establishment both in Church and State; and that they had provided a sufficient barrier to defeat and disappoint any attempts upon them, by enacting, That all in office should receive the Sacrament of the Lord's Supper, according to the rites and usages of the Church of England; and never imagined a set of men would rise up, whose consciences were too tender to obey the laws, but hardened enough to break through any."

Thus, my lords, having shewn that the passages cited by the managers do not maintain this Article, and that the Doctor hath not asserted the Church to be in danger by her majesty's administration; I will next shew, from what causes the Doctor doth suggest the danger of the Church to arise: and of these, schism is one.

That schism may distract the Church, a prayer lately added to our liturgy tells us. That separation from the established Church, which imposeth no sinful terms of communion, is schism, all the learned men of our Church agree; and that there are many people in this nation that are guilty of schism, I think nobody will deny. And although it cannot be imagined, nor is it asserted by the Doctor, that such schism should grow to such a head as to endanger the Church, during her majesty's happy administration; yet, what ill consequence it may be to the Church in another age, nobody can pretend to know, though every body may have too much reason to fear.

So, my lords, when men attack the Articles of our Religion and our Homilies, and represent them as spurious; when they call the doctrine of Non Resistance and Passive Obedience a blasphemous doctrine, what influence that may have hereafter upon our government both in Church and State, your lordships are the best judges.

I submit to your lordships, if the queen can be safe, when it shall be averred in print, that there is one on the other side of the water that is a Jure Divino king, and hath an hereditary right. Can the Queen or Church be safe, when all the whole administration is vilified and abused as it is in the Observator, in this manner? Countryman asks the question, "Have you any more knaves to talk of?"—*Obs.* "Honest countryman, what would you have me to do? If I must run through all the lists of knaves, I must bring in all the courts, all the employments, all the classes of public affairs in the nation."

Can the queen be safe, when the murder of king Charles the first is justified in print by the Review and Observator? When the wet martyrdom of king Charles the first, and dry martyrdom of king James the second are said to be all one, and no difference between them? I say, how can her majesty be safe, when such rebellious principles are so publicly avowed? And if her majesty be in danger, can the Church be safe?

All learned men that understand our constitution have always agreed, that there is such a near relation between the Church and Monarchy, such a dependance of one upon the other, that where one falls, the other cannot stand.

Can either Church or Queen be safe, when so great and necessary a part of our constitution, our parliament, is struck at? When it shall be said "That the members sit in the House to do nothing, making long speeches without meaning, and voting bills without design to have them pass?" And when such rebellious principles are broached, as I mentioned to your lordships upon Friday last out of the Review, to shew the necessity of preaching the doctrine of Passive Obedience, viz. "If the next parliament should prove like this, the na-

tion will be so much the nearer that crisis of time, when English liberty being brought to the last extremity, must open the magazine of original power?" These are some of the things alleged by the Doctor to be dangerous to the Church and State.

But the chief causes from whence the Doctor suggests the danger of our Church and State to proceed, are Atheism, Prophaneness, and Immorality; for he thus expresseth himself, page 20, "What reason have we to think but that the national sins are ripened up to a full maturity, to call down vengeance from Providence on a Church and kingdom thus debauched in its principles, and corrupted in its manners; and instead of the true faith, discipline and worship, given over to all licentiousness both in opinion and practice; to all sensuality, hypocrisy, lewdness and atheism?"

From these sins it is, he apprehends the Church and nation to be in danger; and what judgments have been brought down upon kingdoms and nations for these sins, we have multitudes of instances, both in sacred and other histories; sometimes they have been deprived of the true worship of God, and overwhelmed with idolatry and Mahometanism. Is not the name of God forgot in the place of his miraculous birth? And is not the light of the Gospel totally extinguished where it at first so gloriously shined? And by what means? By infidelity, prophaneness and immorality. And may not the same causes produce the same effects?

Can England be always secure from such judgments, when some amongst us scarce own the first person of the Trinity, by whom they were created? But many have the boldness to deny the divinity of the second person, by whom they were redeemed, and many other such blasphemies and atheistical notions are daily propagated and spread abroad among us; of which I shall beg your lordships' permission to cite some few instances, of those many we shall offer to your consideration in the course of our evidence; and they are such as I hardly dare name, and as your lordships will scarce bear to hear.

There is a treatise called, "A Brief but Clear Confutation of the Doctrine of the Trinity," page the 19th, he says, "The divinity attributed to the Son and Holy Ghost is unscriptural and idolatrous." Page the 14th, "To be short, Trinitarianism is Polytheism and Idolatry, if there be any such thing in nature."

And a book called "Brief Notes on the Creed of Athanasius," speaking of the Trinity and Incarnation, says, "A belief in these points is in no degree necessary, much less necessary before all things."

The Account of the Growth of Deism, p. 17, says, "Many doctrines are made necessary to salvation, which it is impossible to believe, because they are in their nature absurdities. Idem, p. 22, One of my old acquaintance always thought the moral part of the Bible very good; but he also thought that by the strength of his own reason, he could have writ as good a moral himself."

These are sins of a very deep dye, and may justly draw down very heavy judgments; and although we are very well assured, that the piety of her majesty alone is sufficient to over those judgments that are due to such crimes during her own life; and although we are sure, that, by her majesty's care, and the vigilance of her ministers, those sins will not grow to such a head during her majesty's life, as to endanger the Church and State; yet (if not prevented) they may take such root now, as may hereafter endanger the State, the Church, and even Christianity itself: for as among men, 'Nemo repentè fuit turpissimus,' so heresies and schisms in the Church, factious and seditious principles in the state, are not invented and arrive to the height at once, but steal by degrees into the Church and State: and therefore, as in the body natural, so in the body politic, we must meet the disease, and prevent the spreading of its contagion: and one of the best methods to do it, is by our ministers shewing the heinousness of these crimes, and the dangerous consequences that attend them. And we submit it to your lordships, whether the Doctor hath any otherwise asserted the Church to be in danger, than what may happen to her as the consequences of such sins; and whether he any where avers the Church to be in danger by or under her majesty's administration.

As to the Votes of both Houses, we dare not presume to say how far they were designed to extend: but I humbly submit to your lordships' consideration, whether the Vote of both Houses in 1705, did relate only to such suggestions and insinuations of the Church's danger, as should be made about that time, or some short time after; or whether it was intended to have a prospect, and relate to what should be suggested four years after; whereas it was impossible for the wit of man to foresee what should happen in so long a time.

We were then, as we are now, engaged in a war with a powerful enemy; a Pretender, supported by that enemy, and who, since that Vote, attempted to invade these kingdoms, if that army of the French had been successful in Flanders, and the advantage of the war had turned on their side; and if the Pretender had landed with such a successful and powerful army of French Papists in Great Britain, I believe it would have been impossible to have made the generality of the people avoid thinking both Church and State too in danger under those circumstances.

To conclude this branch, if there be any thing in his Sermon, from whence it can be inferred that he suggests the Church to be in danger, yet if it be not suggested to be by reason of her majesty's administration; and if it was not done with a wicked, malicious, and seditious intent to defame her majesty's administration, and to contradict and arraign the Resolutions of both Houses of Parliament; and unless such intention plainly appears, with-

out innuendoes he cannot be guilty within the intent of this Article.

And as to so much of the third Article, which chargeth that "the Doctor, as a parallel, mentions a vote that the person of king Charles the first was voted to be out of danger, at the same time that his murderers were conspiring his death, thereby wickedly and maliciously insinuating, that the members of both Houses who passed the said vote were then conspiring the ruin of the Church;" I cannot give a better answer than the Doctor himself hath given to it, viz.

1. That he doth not draw any parallel between the Vote concerning the king's person, and the Vote of the two Houses.

2. That he does not in his Sermon mention the Vote of the two Houses.

3. That if he had mentioned it, he would not thereby wickedly and maliciously have insinuated, that the members of both Houses, who passed that Vote, were then conspiring the ruin of the Church; but would have insinuated, that as some persons were conspiring the murder of the king, whilst others, no way privy to their wicked intentions, voted his person to be out of danger; so when the two Houses voted the Church to be in no danger under her majesty's administration, there might be some others who were conspiring the ruin of the Church, and many others, who by their vice and infidelity were drawing down God's vengeance both on Church and State.

Mr. *Dee.* May it please your lordships to indulge me a little upon this Article, and I beg leave to make a distinction, as on the last Article, that is, that these words, Danger of the Church, seem in the Articles to bear one sense, and in the Doctor's Sermon another. The danger suggested in the Article, is a danger under her majesty's administration. I must beg leave to say, these words were put in, to insinuate, that the Doctor does in his Sermon urge the danger of the Church to arise from her majesty's administration; which, I think, is not to be found there; and if they were omitted, then it will stand only thus, that the Doctor doth affirm that the Church of England is under great peril and adversity; and if so, I hope, the assertion is not criminal. I cannot, by all the observation I have made on the Doctor's Sermon, find that the Doctor suggests that there is any formed body of men conspiring to overthrow the Church; but the Doctor says, that there are such men that are False Brethren that endanger the doctrines and discipline of the Church. That there is some sort of danger, appears by the form of prayer that is daily offered up for her safety, and therefore a general suggestion of danger would not have answered the end of the Commons to make the Doctor criminal, without adding the words, 'under her majesty's administration;' and if they can shew that the Doctor in any part of his Sermon has charged the queen with such administration as endangers the Church, I am sure I should be very much to blame to appear for him at this bar: But the contrary, I think, appears, when he prays for her life, with these words, added, for the comfort and support of this Church and Nation.

My lords, I shall say no more to that part of the Article, it having been fully spoken to already, but beg leave to take notice, that the managers for the House of Commons have been pleased to say, that the Doctor has reflected upon the Resolutions of both Houses of Parliament, by drawing a parallel between the Vote relating to the murder of king Charles, and the Vote of the two Houses, that the Church was not in danger. My lords, to make a parallel there must be two lines; a line first given to draw the parallel line to; and I beg leave to say, that in the Doctor's Sermon there is no such first line given; for he has not, in all his Sermon, taken notice of any Vote of both Houses. If he has not taken notice of this Resolution of both Houses in his Sermon, the law will not imply that he had any notice of it. For Votes are private Resolutions of the Houses, and always were so, till of late they have been published in print, and the printing of them will not infer that he had notice of them. The Doctor's distinction in his Answer is very true and plain, that he doth not charge the persons concerned in passing that Vote with being concerned in that odious and execrable design of carrying on the murder of that royal prince; (and I hope charity will carry us so far as to think, that very many persons that joined in that Vote were not concerned in it) but that yet, at the same time they passed that Vote, that bloody design was carried on by a private juncto of blood-thirsty men.

My lords, I do not admit, but supposing I should admit the Doctor hath contradicted the Resolutions of both Houses, I submit it to your lordships what crime the contradicting a Vote of the House of Commons, or the Resolution of both Houses, is? The contradicting a known established law may be seditious; but I submit it, whether a Vote is so public an act, that contradicting it, at least without taking notice of it, be any crime, or at least be so high a crime as to deserve a censure? It is very certain he may be thought saucy and unmannerly to do it, or it may be a breach of privilege; but whether your lordships will interpret it to be a crime, and such a crime as will bear an Impeachment for High Crimes and Misdemeanors, I submit to your lordships.

My lords, we humbly hope, that notwithstanding any thing yet offered against the Doctor, that your lordships will be of opinion, that the acquitting the Doctor of this impeachment will be a noble and convincing proof of the undoubted truth of that vote, that the Church of England, (of which the Doctor is a true, though an unfortunate son, whilst under a charge by the Commons of Great Britain for High Crimes) under her majesty's administration, is in a safe and flourishing condition.

Dr. *Hoadly*. My lords, we are now upon the third Article of Impeachment, in which Doctor Sacheverell is charged with "falsly and seditiously suggesting and asserting, that the Church of England is in a condition of great peril and adversity under her majesty's administration." If by these words, 'under 'her majesty's administration,' your lordships are to understand, by the course and tendency of her majesty's administration, that charge we positively deny, and humbly assure ourselves, that the learned managers have not been able to maintain it, either from the general scope and design of the whole Sermon, or from any passages contained in it.

If by those words, 'under her majesty's administration,' is to be understood only during the time of her majesty's administration, then we apprehend that there may be perils under her majesty's administration, which do no ways proceed from such her administration, and which may be mentioned without any seditious thought or intention of reflecting upon her majesty's happy administration.

If your lordships look through the whole Sermon, it will appear, that he who now stands accused for casting this foul aspersion upon her majesty, never once mentions her throughout this whole discourse, but in terms full of the profoundest respect and reverence: in the very beginning of this Sermon, in the second page, this is reckoned as one chief part of that day's deliverance, which he was then solemnizing, "That this good and pious relict of the royal family, sits now happily upon the throne of her great ancestors." In the 19th page we find him with an honest and hearty zeal asserting her majesty's right to the throne, and praying God to bless her in it; and within a few lines he again repeats that prayer, "That God would long preserve her on that throne," for this very remarkable reason, "because she is the comfort and support of the established Church."

Is this, my lords, the language of one that would suggest and assert, that very Church to be in a condition of great peril and adversity from her majesty's administration? Or can your lordships presume, that any one can so far prevaricate with God and man, as openly to thank God for the peculiar happiness that we now enjoy by her majesty's sitting on the throne of her ancestors, and to beseech him long to preserve her there for the support and comfort of the established Church, and yet assert that that Church is in great adversity under, that is, from her majesty's administration?

In this case your lordships will suffer me to shew what those perils are which the Church is said to be in, in this discourse, and how they do not proceed from her majesty's administration.

The dangers spoken of in this Sermon are either such as arise from the infidelity and profaneness, the vice and immorality of the age, or else such as always have attended the Christian Church from her first foundation, and always will attend her whilst she continues militant upon earth.

That there are dangers arising to the Church from infidelity and prophaneness, is already, I doubt, too evident from those authors I mentioned under the second Article, and from what the gentlemen who have spoke before me, have observed upon this: if it yet wants a confirmation, we shall beg leave to lay before your lordships a black catalogue of prophaneness and blasphemy, not fit to be heard more than once.

As to the dangers proceeding from vice and immorality, the laws of the land, and the many proclamations issued out by royal authority upon that occasion, are an undeniable evidence of the growing danger to the Church on that head, and of her majesty's special care to suppress and prevent that danger. In the close of those proclamations her majesty declares her royal resolution to punish all manner of vice, immorality and prophaneness in persons of all degrees whatsoever, and particularly in such as are near her royal person; and these proclamations are ordered to be read by all ministers in their respective congregations, at least four times in every year; and they are directed to incite and stir up their congregations to the practice of piety and virtue, and the avoiding all immorality and prophaneness. My lords, hard is the fate of ministers, if they must reprove prophaneness in men of all degrees under her majesty's displeasure; and yet if they once happen to mention men of characters and stations in their public discourses, that too must be made one part of the impeachment against him.

My lords, it was said indeed by a learned manager, that the pulpit was not a proper place for complaints of this nature; that these things ought not to be spoken of in public unless they could be proved; and if they could be proved, those that are known to be guilty, should be prosecuted in a due course of law. But, my lords, I humbly apprehend it to be the duty of a minister of the gospel to be instant in season, and out of season; to exhort and rebuke with all authority, and without distinction. This their holy function obliges them to do, and the dignity of that function does, and ought to protect them in the performance of that duty; but that ministers should be obliged to prosecute every offender in a court of justice, is not yet known to be any part of their office; and he that at any time should take that part upon him, would hardly avoid that imputation which many people are ready to lay upon the whole profession.

In the next place, your lordships will consider, whether the dangers mentioned in this Sermon are not such as have in all ages, and under the best princes, infested the Church.

I appeal to the reverend bench of bishops, whether even in the Apostles' time, there were not men of unstable minds crept in among them; some carried about with every wind of

doctrine, deceiving and being deceived; others teaching for doctrines the traditions of men: and whether in the immediate succeeding ages the Church was not miserably rent and divided by factious and schismatical impostors. Their lordships well know that the pious care of Christian emperors was not able to prevent the spreading of old errors, and the continual springing up of new ones; neither has her majesty's peculiar piety and zeal prevented many instances of prophaneness and irreligion under her happy administration; but certainly no inference ought to be made from an historical account, or bare mention of such like perils of the Church, as if that was intended to arraign the administration of those princes in whose times they happened.

My lords, that there are such dangers attending the Church, even under her majesty's happy administration, needs no other evidence than that form of prayer which is by her majesty's authority directed to be used in all churches; in which we beseech God, "That no sedition may disturb this State, nor schism distract this Church; and that he would give us all grace, seriously to lay to heart the great danger we are in by our unhappy divisions." My lords, this prayer is enjoined to be used by public authority; and particularly mentions the great danger of the Church, in being at this time distracted with schism; and I must submit it to your lordships' consideration, how hard it is that a minister may not from his pulpit mention those dangers without offence, which he is specially commanded to pray against in his desk.

Mr. *Dodd.* We shall beg leave to produce several books, wherein there are the strongest opinions that perhaps your lordships ever heard of: and we shall first confine ourselves unto them which relate to blasphemy, irreligion and heresy, which we confess are not pleasant to be heard, or fit to be published, if it were not absolutely necessary for the Doctor's defence.

Mr. *Phipps.* My lords, we begin with some miscellaneous tracts, published by Mr. Edward Hickeringill. And we offer them first to your lordships' consideration, because he was a False Brother; and we think his tracts will justify the Doctor in what he hath said in relation to the Church being in danger, from the blasphemy, and other enormous crimes mentioned in his Sermon.

Mr. *Dee.* It is in page 12.

Clerk reads.] "The second pretender to infallibility is the Bible; and that I admit too, so soon as it is agreed which chapter and verse is God's word, and which not, and why. For as for some verses and clauses in the Holy Bible, the very penmen thereof did not sometimes know very well whether the same were the dictates of the Spirit of God, or no. Sometimes they write, 'Thus saith the Lord,' and not I, but the Lord, commands so and so: and then again, in a qualm or quandary, modestly pretend to guessing: 'I think also,' says St. Paul, 'that I have the spirit of God.'"

Mr. *Thompson.* My lords, upon what is offered to be given in evidence, the Managers apprehend there is something that will require their consideration.

[Accordingly the Managers withdrew, and then the Lords adjourned to their House above; and in a short time their lordships being returned, and seated as before, and the Managers being returned to the place appointed for them at their lordships' bar, proclamation for silence was made by the serjeant at arms.]

Mr. *Thompson.* My lords, the Managers have considered the nature of the evidence opened by the counsel; and without troubling your lordships to observe how material it is for the prisoner's defence, submit it to your lordships, whether such impious and blasphemous passages as the counsel were ashamed to repeat, shall be republished in so solemn a manner, by reading them in evidence before your lordships.

Lord Chancellor. Gentlemen, you that are of counsel for the Doctor may proceed in your evidence as you shall think proper.

Mr. *Dodd.* My lords, we must own there are a multitude of sentences never to be repeated, if it were not necessary for our defence; but we think it so material for the Doctor's defence, that we dare not depart from it without your lordships' order.

Mr. *Phipps.* My lords, the reason that learned gentleman gave against reading them, is the very reason we offer for reading them; for the Doctor ascribes the danger of the Church to those blasphemies and impious doctrines and tenets, that are so frequently published, and which call for God's judgments on the nation.

Mr. *Dee.* My lords, we desire he may read in the same book he was reading before.

Clerk reads.] "For Sabbathising. The Sabbath, Oh the Sabbath—called by the canning priestcraft, not by the Holy Scripture, the Lord's Day, to recommend it the better to the unthinking mob. Of all the other seven days the priest's best market-day to put off his wares, and turn them into money. (Ibid. p. 17.)

"Family duties are the next plausible piece of priestcraft divinity, I mean praying with the family, (not that I condemn it) though our blessed Saviour seems to condemn it by his practice and preaching. (Ibid. p. 21.)

"Saying grace, an universally cried up piece of divinity, superstition, or priestcraft; for we never read that Christ or his Apostles said grace, either before meat, or after meat. (Ibid. p. 23.)

"King Saul found to his cost, that he had better have displeased all Israel, than Samuel the good high-priest; and had better have rent the clothes off from his own back, than have rent Samuel's cassock.—It fretted the good old gentleman; and in a passion he said, God hath rent from thee the kingdom also, and hath given it to thy neighbour that is better than thou. (Ibid. p. 50.)

"Then the Lord answered, Take an heifer with thee, and say I am come to do sacrifice to

the Lord. The policy of heaven, we see, jumps with our late priestcraft in this, to make religion the common covert to hide a plot. (Ibid. p. 51.)

"His kingdom, which was given to David, because he was a man after God's own heart, (not in holiness, that is not meant: for besides his adultery and murder, his many other sins, and cursing his enemies to the pit of hell, is unaccountable;) but after God's own heart is a Hebraism, and in English signifies as much as a man for my turn, he will kill and slay as the priest directs, by orders received from heaven; he will fulfil all my will, saith the high-priest. (Ibid. p. 52, 53.)

"I can by no means perceive that this commission to teach, baptize, excommunicate, or absolve, does properly or more appertain to a grey fryar, or any black coat, more than to a grey coat or layman. (Ibid. part 2, p. 4.)

"To say, the use (being for God's service) sanctifies it: so may a meeting-house, a tabernacle, or my dining-room be consecrated, when we pray and preach there, or say grace there, *pro hac vice*; and *vice versa*, it is unconsecrated when dinner-time comes, or the punch-bowl." (Ibid. p. 14.)

Mr. *Dee.* The Rights of the Christan Church is the next book we shall offer to your lordships.

Clerk reads.] "At the close of the supper, the great meal with them, the master of the feast distributed among his guests small pieces of bread; and having first drank of the grace-cup, delivered it to be handed about: to which Christ, who instituted no new rites, superadded the remembrance of his sufferings; and directs his disciples as often as they did this, that is, celebrate such festivals, and close them with the *post-cenium*, to commemorate him after this manner. (Page 105.)

"Does not every one as well as the minister, equally apply the bread and wine to the same holy and spiritual use, in commemorating the benefits received by our Saviour, and in offering up the same prayers, and desiring the same blessings? And whoever does this with a due application of mind, rightly consecrates the elements for himself, since this is the only consecration they are capable of: any thing further than this may rather be called conjuration than consecration." (Ibid. p. 108.)

Mr. *Dee.* The next book we offer to your lordships is Blount's Oracles of Reason.

Clerk reads.] "Reason is able to furnish us with enough to make us happy, and that is as much as we need care for. (Preface, p. 3.)

"When he made his cavalcade upon Asnego, they extolled him as the descendant of king David; but his untimely apprehension and death, together with his neglect to improve the inclination of the people to make him king, did allay the affections of the Jews towards him. (Ibid, p. 166.)

"It seems a very cruel and very hard thing in this respect that God should be said to have tormented, nay, and ruined mankind for so small a fault; and that too committed through the levity of a woman's mind." (Ibid. p. 49.)

Mr. *Phipps.* The next is Dr. Burnet's Archæologia Sacra.

Clerk reads.] "Id utique videtur gravissimum, et asperrimum, in hac Narratione, quod Gentem humanam plexisse, imo perdidisse dicatur Deus ob rem exiguam, et faminilis ingenii levitate perpetratam."

Mr. *Phipps.* The next is, An Account of the Growth of Deism.

Clerk reads.] "But since the gospel simplicity has been worn off, the priests of all Churches have agreed, first, That it is necessary for all Christian people to communicate at the Lord's table. Secondly, That this sacrament cannot be rightly celebrated without the assistance of a priest, who must consecrate the elements to the use for which they are designed; whereby the priest is made absolutely necessary to the very being of the sacrament. The priest also making himself judge of every one's preparation for this sacrament, has it in his power to admit to a participation whom he thinks fit; as likewise to exclude whom he pleases from this necessary means of salvation: and hereby he is enabled to make his terms with his people, who must be contented to save their souls upon what conditions he will admit. No wonder, then, that so great a noise has been made concerning this sacred commemorative repast. That Christian communion which you read of as practised in the Apostles' days, was nothing else but a religious conversation with Christians one amongst another. It was for society-sake that they went from house to house, that they eat and drank together frequently.—Now it is plain, that this sort of religious conversation may be kept up among Christians without either priest or altar, or any set form of prayer, or praise. It was long after the Apostles were dead and buried, before the temples were built, or altars erected, or set orations were made to the people in churches. And what if you should further consider, if there be any part of this primitive Church communion that might not have been performed by a woman as well as a man?—When the primitive Christians met together to break bread, from house to house, had any of these women craved a blessing on that bread, we have no reason to doubt but that God would have heard her prayer." (P. 191, 192, 193.)

Mr. *Phipps.* The next is, A Letter concerning Enthusiasm.

Clerk reads.] "Is the doing good for glory's sake so divine a thing? Or is it not diviner to do good even where it may be thought inglorious, even to the ungrateful, and to those who are insensible of the good they receive? How comes it then, that what is so divine in us should lose its character in the divine being?

And that, according as the Deity is represented to us, he should more resemble the weak, womanish, and impotent part of our nature, than the generous, manly and divine? (Page 59.)

"One would think it were easy to understand, that provocation and offence, anger, revenge, jealousy in point of honour, or power, love of fame, glory, and the like, belong only to limited beings, and are necessarily excluded a being which is perfect and universal. (Ibid. p. 60.)

"It is malice only, and not goodness, that can make us afraid. (Ibid. p. 61.)

"So that we have only to consider, whether there be such a thing as a mind that has relation to the whole, or not: For if there be no mind, we may comfort ourselves, however, that nature has no malice. (Ibid. p. 62.)

"For nobody trembles to think that there should be no God, but that there should be one. (Ibid. p. 63.)

"I am not a divine good enough to resolve what spirit that was which proved so catching among the ancient prophets, that even the prophane Saul was taken by it." (Ibid. p. 69.)

Mr. *Phipps.* The next is, A Brief, but Clear Confutation of the Doctrine of the Trinity.

Clerk reads.] "The divinity attributed to the son and Holy Ghost, is unscriptural and idolatrous. (Page 9.)

"This one fundamental false principle, as well with Jews and Turks, as Heathens, has done more mischief to Christianity, than all our other errors besides. (Page 10.)

"For my part, I declare I shall never more admire at the absurdity of either Papists, Turks, or Heathens; be they as gross as they will, I am sure they will never be able to exceed this doctrine. (Ibid. p. 11.)

"To be short, Trinitarianism is Polytheism and Idolatry, if there be any such thing in nature. (Ibid. p. 14.)

"Revelat. 17, 5. 'And upon her forehead 'was a name written, Mystery, Babylon the 'Great, the mother of harlots, and the abomi-'nations of the earth.' And to what, I pray, in Popery can that word Mystery there so properly relate, as to the Trinity?"

Mr. *Phipps.* The next is, Brief Notes on the Creed of Athanasius.

Clerk reads.] "A belief in these points, that have been always controverted in the churches of God, is in no degree necessary, much less before all things. (Page 7.)

"Now I appeal to all men that have any freedom of judgment remaining, whether this Creed is fit to be retained in any Christian, much less Protestant and reformed Church? Since it subverts the foundations not only of Christianity, but of all religion, that is to say, reason and revelation."

Mr. *Dee.* There is a book marked with the letter L, called, An Account of the Growth of Deism.

Clerk reads.] "Many doctrines are made necessary to salvation which it is impossible to believe, because they are in their nature absurdities. I replied, that these things were mysteries, and so above our understanding. But he asked me, to what end could an intelligible doctrine be revealed? Not to instruct, but to puzzle and amuse. (Ibid. p. 17.)

"One of my old acquaintance always thought the moral part of the Bible very good; but then he also thought, that by the strength of his own reason he could have written as good a moral himself. (Ibid. p. 22.).

"If you look over the state of religion, as it standeth in Christendom, there is no Church whatsoever which will accept you as a member of its communion, but upon some particular terms of belief or practice, which Christ never appointed, and it may be such as an honest and wise Christian cannot consent to.—It looks like a trick in all churches to take away the use of men's reason, that they may render us vassals and slaves to all their dictates and commands. But what greater slavery than to force on men a belief of such things as necessary to salvation, of which it is not possible to form an idea? Though I am satisfied there is no such thing as a change of bread into the flesh of Christ, yet I can form an idea that such a thing may be, that the same power that changed earth into a man, may change bread into flesh; but I can frame to myself no idea of what your Church teacheth in the sacrament, That the body and blood of Christ are verily and indeed taken and received of the faithful: And when I ask, how can this be understood by a Protestant, who believeth that there is no other body but that of bread? I am told, that the Church means it in a spiritual sense. Now, I have tried, and find it impossible for me to form to myself an idea of a body verily and indeed in a spiritual sense. (Ibid. p. 24.)

"Your Church will require me to believe other absurdities as bad as these; as that kings and bishops have divine right to that power which they exercise over us; whereas with my own eyes, I saw our great and gracious king accept the crown of England as the gift of the people. And I see as plainly that bishops are an order of men of their own, not of Christ's making. (Ibid. p. 25.)

"I can find no footsteps of any jurisdiction given to the twelve over the seventy, or indeed over any body else." (Ibid. p. 26.)

Mr. *Dee.* The next is, The History of Religion.

Clerk reads.] "Strange and puzzling methods of religious ceremonies and mysteries, and of various rites of sacrificing, good for nothing but to confound and distract the minds of men. (Page 310.)

"In very deed, creeds were the spiritual revenges of dissenting parties upon one another." (Ibid. p. 312.)

Mr. *Dodd.* The next is, Asgil's Argument.

Clerk reads.] "God told Adam, that if he did eat he should die; the devil told Eve, that they might eat and not die; and these were the first words spoken to man by God, or the devil; upon the truth or falshood whereof, the very beings of them both were to depend for ever: For which ever of them could maintain the truth of his word against the other, he must have been God, and the other the devil. And therefore God having turned the lie upon the devil, he is from thence called a liar from the beginning, and the father of it, and will never be believed again for ever. God could not have dispensed with his word, without complimenting the devil with his godhead. (Ibid. 36.)

"What is it that you do, or would believe of Christ, or in Christ? Answ. Why, we believe him for our Saviour. Save you! from what? Why from our sins. Why, what hurt will sin do you? Why, it will kill us. How do you know! Why, the law of God saith so: 'In the day thou eatest thereof, thou shalt die.' Why, but then will not this Saviour save you from this law, and from this death? No, he will save us from sin. Why, then it seems you have got a pardon for horse stealing, with a Non-Obstante to be hanged. Do but see now what a jest you have made of your faith. And yet I defy the order of priesthood to form a better creed than this, without admitting the truth of my argument, or to make sense of their own faith without adding mine to it. It is much easier to make a creed, than to believe it after it is made: Nor can any man really believe any part of the Gospel that doth not believe it at all. For it is a doctrine so dependant upon itself, that unless we know the whole of it from the beginning to the end, we cannot know the use and reason of any part of it. Wherefore (notwithstanding this inundation of death in the world, and the infection of sin contracted upon man from hence) I am not affrighted from re-assuming my assertion at the beginning, That this long possession of death over man, is a possession against right. (Ibid. p. 82.)

"Behold, ye despisers, and wonder! Wonder at what? Wonder to see Paradise lost, with the tree of life in the midst of it! Wonder and curse at Adam for an original fact, who in the length of one day, never so much as thought to put forth his hand for him, and us, and pull, and eat, and live for ever. Wonder at, and damn yourselves for fools of the last impression, that in the space of 1700 years, never so much as thought to put forth our hands every one for himself, and seal and execute that covenant of eternal life, and live for ever. (Ibid. p. 97.)

"To be even with the world at once, he that wonders at my faith, I wonder at his unbelief. And stare at me as long as you will, I am sure that neither my physiognomy, sins, nor misfortunes, can make me look so unlikely to be translated, as my Redeemer was to be hanged." (Ibid. p. 98.)

Mr. *Dee.* The next is a book called, Christianity not mysterious.

Clerk reads.] "God himself, nor any of his attributes are mysteries to us for want of an adequate idea: No, not eternity. (Ibid. p. 80.)

"As far as any Church allows of mysteries, so far it is anti-christian, and may with a great deal of justice, though little honour, claim kindred with the scarlet whore. (Ibid. p. 107.)

"For to speak freely, contradiction and mystery are but two emphatic ways of saying nothing. (Ibid. p. 134.)

"Contradiction expresses nothing by a couple of ideas that destroy one another; and mystery expresses nothing, by words that have no ideas at all.

"It will not be amiss to lay down a short parallel of the ancient heathen, and new-coined Christian mysteries. And I shall endeavour so to do it, as to make it evident they were one in nature, however different in their subjects." (Ibid. p. 156.)

Mr. *Dee.* The next is Sermons and Essays of Mr. Whiston's.*

Clerk reads.] "When the Scriptures speak of the one God, or of one God, they plainly and distinctly mean, one original fountain and author of all beings whatsoever; or mean thereby one supreme God, the Father only. (Ibid. p. 213.)

"The moderns called these three divine persons but one God, and so introduced at least a new, and unscriptural, and inaccurate, if not a false way of speaking in the Church." (Ibid. p. 215.)

Mr. *Dee.* He makes it an Errata, that he has named the Trinity; and put it out of the book.

Clerk reads.] "Errata, page 123, line 23, 24. To whom with the Father, and the Holy Ghost, *read*, in the Holy Ghost; and *dele* three persons and one God." (Ibid. p. 415.)

Mr. *Dee.* The next is the Unreasonableness of making and imposing Creeds.

Clerk reads.] "But what Creeds and Articles of Faith can be produced that are not doubtful and disputable? That which goes under the name of the Apostles not excepted; it being neither of undoubted authority, nor indisputable, or unambiguous sense in some articles thereof; though it be generally received by Christians, and as venerable for its antiquity, and professed, or rather said, by all, even those who understand not what they say when they recite it." (Ibid. p. 14, 15.)

Mr. *Dee.* The next, An Account of the Growth of Deism.

Clerk reads.] "If those writings which they call Holy Scriptures are of their side, as they all say they are, I make no doubt but

* See his Case, A. D. 1711.

they are of their own inventing. And if Jesus Christ their patron laid their foundation of those powers, which both Papist and Protestant clergy claim to themselves, from under him, I think, the old Romans did him right in punishing him with the death of a slave." (Ibid. p. 25.)

Mr. *Phipps.* We shall next shew some Papers that reflect on the Church and Clergy; and shall first offer to your lordships' consideration the Rights of the Christian Church.

Clerk reads.] "Not only an independent power of excommunication, but of ordination in the clergy, is inconsistent with the magistrates right to protect the commonwealth. (Page 47.)

"The Scriptures now here make the receiving the Lord's Supper from a priest necessary; nay, not one instance of the laity's receiving it so, can be produced from thence. (Ibid. p. 104.)

"It can belong only to the people to appoint their own ecclesiastical officers.—It is an inherent fundamental right of all communities. (Ibid. p. 237.)

"None pretend to impose a conductor or director, on another in temporal affairs, but every one is left to manage them, as he thinks best, for his own interest, as being presumed to understand it better than another; and therefore is to chuse his own lawyer, physician, brewer, baker, &c. and by the same reason he ought to chuse his own spiritual conductor. (Ibid. p. 240.)

"It is absurd to imagine every Christian is not capable of such circumstances, as praying aloud, distributing the bread and wine, or (according to the present mode) of sprinkling an infant, and repeating a set form of words. (Ibid. p. 137.)

"Have they not inserted this power of theirs in an Article of the Creed, commonly called the Apostles, viz. I believe the Catholic Church." (Ibid. p. 402.)

Mr. *Dee.* We shall next offer the Review.

Clerk reads.] "Whether our fathers had a necessity to make those exclusive laws, and impose as necessary their indifferent things, acknowledged to be so, as terms of communion: nor is this all, but supposing they had; which nevertheless I do not grant; then this Address is further pressed to your lordships, to examine whether that necessity does yet continue, or no? Either of which will be the same thing. For if there either was not a necessity at the time of their enacting, or that necessity does not yet remain, let which will happen to fall out, the Act of Uniformity, imposing such and such indifferent things, as terms of communion, will appear scandalous to the Church, injurious to the public peace, and a grievance to the whole nation." (Vol. 2, N. 112, p. 447, 448)

"Lest it become a new, proverbial Jest,
To be as wicked as an English Priest."
(Ibid. vol. 3, Numb. 87, p. 106.)

"I cannot but tell him, should I publish the matters of fact which I am master of, with respect to the high-flying gentlemen of the clergy; should I give a faithful account of the most infamous and scandalous behaviour, the notorious lives, the beastly excesses, and the furious treatment of their brethren the Dissenters which on a small search I have been acquainted with; the inferior clergy of his party would appear the most wretched, provoking, abominable crew, that ever God suffered to live unpunished, since he destroyed Sodom and Gomorrah by fire from heaven. (Ibid. Numb. 27, p. 107.)

"If words could be made treason, one third at least of the inferior clergy in England would be hanged. (Ibid. Vol. 2, Numb. 105, p. 418.)

"I again appeal to you, gentlemen, whether, generally speaking, all over this unhappy nation, the clergy are not three parts in five, in a close conjunction with the enemies of the Church's peace, and the professed enemies of the government? (Ibid. Vol. 2, Numb. 36, p. 142.)

"Others, not so directly, but altogether as fatally, and tending to the same end, with subtle designs to divide and amuse the people, by preaching, writing, and printing, endeavour to revive the said exploded doctrines of Non-Resistance and absolute unconditioned Obedience, as things the people of England ought to think themselves obliged by; which though in themselves of no force, yet manifestly tend to unravel the constitution, to invalidate the queen's title to the crown, and destroy the legal authority of parliaments in the nation. An eminent proof of which is now depending before the House. (Ibid. Vol. 6, Numb. 116, p. 471.)

"Drunkenness, oaths, and abominable lewdness; ignorance, negligence, and scandalous insufficiency; abhorred Error, Deism and Socinianism, have over-run the clergy." (Ibid. Numb. 93, p. 371.)

"You know the Church he means is High-Church, which is a fiction, a Church of the brain, supported by a little, insignificant, trifling number of brainless people; and the people of England are no more concerned about that Church, than about the institutions of government laid down in Moor's Utopia, Harrington's Oceana, or Bacon's New Atlantis; and all the canons, rites, and ceremonies of that Church are no more to be considered by you, or me, than so many ballads, or Duck-lane penny histories. (Observator,* Vol. 4, Numb. 89.)

"The universities have large endowments, which I fancy may be better employed for the public good than at present. Let you and I then vote them useless. (Ibid. Numb. 67.)

"*Country-M.* With all my heart, master.

* See in vol. 14, p. 1095, the Case of Tutchin prosecuted for publishing certain numbers of the Observator.

Mr. *Dodd.* My lords, the next thing we should go upon, is to shew several passages which reflect upon the Queen, the State, and Ministry; there are five or six instances which we shall read, and then we shall have done.

Clerk reads.] "In short, if Jure Divino comes upon the stage, the queen has no more title to the crown than my lord-mayor's horse: all the people are bound by the laws of God to depose her as an usurper, and restore their rightful and lawful king James the third. (Review, Vol. 2, Numb. 80, p. 519.)

"The line of all the world famed for blood, and that had ravaged the best families of the kingdom. (Review, Vol. 3, Numb. 122, p. 486.)

"Ever since the coming of king James the first to the crown, this nation has been perplexed with divisions, uneasinesses, oppressions and murmurings, both in sovereign and subject. (Ibid. Vol. 2, Numb. 43, p. 170.)

"Either the Dissenters had reason for former discontents, and reason to complain of oppression, persecution, and infringement of privileges, or they had not. If they had; the Church was cruel, and the State unjust before, in laying those loads upon them. If they had not, both Church and State were infatuated and delirious, in granting them the Toleration, and liberties since conceded. (Ibid. Numb. 44, p. 174.)

"If the next parliament should pursue the steps of the last, the nation, in my opinion, will be so much nearer that crisis of time, when English liberty being brought to the last extremity, must open the magazine of original power. (Ibid. Numb. 46, p. 181.)

"What can be said for members sitting in the House to do nothing; making long speeches without meaning, and voting bills without design to have them pass? (Ibid. Numb. 27, p. 106.)

"The balance between 41 and 88 will appear to run against him; and the difference between the dry martyrdom of king James, by his passive-obedience church-subjects, and the wet martyrdom of king Charles the first, by people that never made any such pretence, will appear so small, that it is not worth Dr. D——'s while to meddle with it. (Ibid. Numb. 123, p. 489.)

"*Countryman.* Pray, Sir, are there a great many of those people alive, that cut off the head of king Charles the first? (Observator, Vol. 2, Numb. 89.)

"*Obs.* No, no; they are dead and gone a long time ago. However, the story serves some men as raw-head and bloody-bones to affrighten some, and calumniate others. Now, for my part, I know nothing of the business of king Charles 1. I was born since the Restoration; and I have so high a value for the prudence and justice of our forefathers as not to condemn any of their actions, for the common good. We are unkind to ourselves in censuring the justice of our forefathers actions, and thereby do give a handle to our successors to censure ours. Did our forefathers decruncate the father? Did not we depose the son, and put one more righteous in his stead? Did we not divest him of all his regalities, and make him a fugitive on the earth? And may not future ages examine the difference between the decollation and the abdication?

"I recite this, to let you know the encouragement the Papists have had in this reign; when by their interest they can get such as write against them prosecuted, &c. (Ibid. Vol. 4, Numb. 97.)

"Should I tell you, honest Countryman, the accounts I have had of the numbers of Popish priests and emissaries come into England the first two years of her majesty's reign, it would make your hair stand an end. (Ibid.)

"They would have but a sorry foot soldier of the Observator.—And yet I have been where those people that would send me durst not come, and where perhaps I have commanded better men than themselves. It has been my fortune to be in a fighting army, under a general that we now dearly want, who did not use to return from the war, *sine clade victor*, and then ride in triumph over his queen on a medal. (Ibid. Vol. 3, Numb. 15.)

"I am sorry that the folly of some, and the bribery of others, have brought us into such amazing and dismal circumstances, that either our liberties must be lost, or be maintained by a body that is neither of us, nor from us (Ibid. Vol. 3, Numb. 99.)

"I shall produce myself as an example of the arbitrary power of this parliament; and the man that does not acknowledge their proceeding against me to be arbitrary, must assert, that an arbitrary power was never executed. (Ibid.)

"Now if this be not arbitrary, I do not know what to call so. The Spanish inquisitors have so much regard to justice, or the shew of it at least, that they will suffer a man to speak in his own behalf, &c.——Now, Countryman, do but consider my case; I was sentenced to the loss of my liberty without being heard. (Ibid.)

"Which plainly shews, that what the Commons condemned me for, would not bear an action at law. (Ibid.)

"My intent is to inform such as you, honest Roger, how much you have been abused by your representatives. (Ibid.)

"This parliament is the very reverse of former parliaments; as they were merciful, this was cruel; as they made good and wholesome laws to preserve the liberties of their electors, these took away the freedom of their electors without any law; as they used all means to keep their electors out of jail, these used all means to put them into jail. (Ibid.)

"*Obs.* Honest Countryman, what wouldst thou have me to do? If I must run through all the list of knaves, I must bring in all the courts, all the employments, all the classes of public affairs in the nation. (Ibid. Vol. 2, Numb. 99.)

"I really find the state of England in general to be thus, Its trade under a sensible, miserable decay in all its branches:——Its navy great and flourishing; but all her well-laid designs either defeated in their preparations, by the miserable methods, and ill government, with relation to seamen, or disappointed by the ill conduct or cowardice of her commanders. In civil concerns, in the utmost confusion of parties——blending together the most absurd contradictions, such as propagating religion by a scandalous ministry,——reforming manners by debauched magistrates, and chusing men to make laws, by bribery and corruption." (Review, Vol. 2, Numb. 2, p. 5.)

Mr. *Phipps.* My lords, we shall offer but one passage more, and that is out of The Divine Rights of the British Nation vindicated.

Clerk reads.] "And if he will but stay till the end of this present session of parliament, he will find several new powers annexed to the regal office, and perhaps some made void and repealed for the public good." (Page 105.)

Mr. *Dodd.* My lords, we have now done with our proofs; we have gone over the heads of blasphemy, irreligion and heresy; the Church reflected on; the queen, ministry, and all orders of men reflected upon and abused. We have cited these books and passages, not to reflect on the government, but as those which put the Doctor in some heat and concern both for the Church and State; and we hope your lordships will make the best construction of the Doctor's intentions in this matter.

Mr. *Phipps.* If blasphemy and irreligion can endanger the Church; if treason and rebellion can endanger the nation, I think, with great submission, the Doctor has made good his Answer; and therefore, I hope, he is not guilty of any part of this Article.

Mr. *Dee.* My lords, I beg leave that we may apply some part of the proofs we have read today to the fourth Article.

Mr. *Phipps.* My lords, the other Article, I fear, will be longer than will be fit to trouble your lordships with now; we shall be ready to proceed when it is your lordships' pleasure.

Then the Lords adjourned to their House above.

Eighth Day.

Tuesday, March 7.

The Lords coming down into Westminster-hall, and being seated in the manner before mentioned, proclamation was made by the Serjeant at Arms as follows:

Our sovereign lady the queen doth strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

Then another Proclamation was made: Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy bail, else thou forfeitest thy recognizance.

The Doctor appearing at the bar accordingly, with his counsel, as before:

Lord Chancellor. Gentlemen, you that are counsel for the prisoner may proceed in his Defence.

Mr. *Dodd.* If your lordships please, we will proceed to the fourth Article. That Article contains several heads: "1. That the Doctor suggests her majesty's administration tends to the destruction of the constitution. 2. That there are men of characters and stations in Church and State, who are False Brethren, who undermine and betray, and put it in the power of others to overturn and destroy the constitution. 3. That the Doctor charges her majesty, and those in authority under her, with a general mal-administration. 4. That he persuades the subjects to keep up a distinction of faction and parties, instils jealousies, foments divisions, and stirs up the subjects to arms, and perverts several texts of Scripture."

My lords, as to the first, the Doctor is so far from suggesting that her majesty's administration tends to the destruction of the constitution, that he has not, as we apprehend, said any thing that can bear such a construction. The Doctor denies, that he has made any mention of her majesty's administration in Church or State in his Sermon: therefore, how can he argue that it tends to the destruction of the constitution? It has not been proved. But he takes all opportunities to speak of the blessings we enjoy under her majesty's government; prays for her preservation; and that she may long reign for the comfort and support of the Church; professes what he spoke proceeded from a tender concern for her majesty and her government: so that we humbly apprehend there was little occasion for such a charge against him.

The second part of the Article is, that "there are False Brethren, that are men of character and station in Church and State, who undermine and betray, and put it in the power of others to overturn and destroy the constitution." Now the False Brethren by him described, are persons who propagate false doctrines, who give up the discipline and worship of the Church, who are for neutrality in religion, or who wish well to the Church, but do not shew their zeal in obeying her precepts, and defending her rights. These are the False Brethren intended; and this is very different from the allegation in the Impeachment. As to that part of the charge, of putting it in the power of others to destroy the constitution, he does not mention men of characters and stations in this place; but, as I take it, in page 15, where this passage is supposed to be contained; and yet it is twelve pages after, before these words are mentioned. They are not joined together, as is supposed by the Article; and speak nothing of that matter. It is a conjunction of passages widely different from, and not relating to, one another. The betrayers of the constitution, to whom the Doctor does refer, are such as by

writing endeavour to subvert the foundation of our Church and State; such as are of a latitudinarian principle, who neither believe her faith, own her mission, submit to her discipline, or comply with her liturgy. My lords, these are the heads, and persons, that the Doctor refers to; and not such persons or things, as are pretended by the Article.

As to a general mal-administration under her majesty, he abhors the charge; has no where said it: Always, as a good subject, mentioned her majesty with the profoundest duty and respect; nor does he tax any in authority with a mal-administration. And surely it is not sufficient to charge the Doctor, as if he had fallen foul on the ministry, when there is no proof of it, and when there is no passage in his Sermon, as we apprehend, that tends to it. The Doctor has on all occasions, as a good subject, justified her majesty's title; and particularly at the beginning of this war, he preached a Sermon at Oxford, before the University, therein justifying her majesty's title to the crown, and her entering into the war against France and Spain; wherein he has very clearly demonstrated these two points. And as to the charge of endeavouring to keep up distinction of parties, he is so far from it, that he complains of those that have divided us with a distinction of high and low churchmen; they have villainously divided us with knavish distinctions: And what could he mean by all this, but a service to the government; and that they which raise such false insinuations, such fears and jealousies, are the people he intended, and complains of? And as he has done that, so he takes all opportunities to pray, that we may be one fold under one shepherd, and that all invidious distinctions might be laid aside.

My lords, the next thing is, the raising these groundless fears and jealousies, that are suggested. As to that, the passage we read before is quite opposite: The Doctor rebukes them, that do it as ill Christians, and ill subjects; and early sets forth the mischief of them. He is so far from encouraging it, that he has upon several occasions severely censured it. And as to stirring up her majesty's subjects to arms and violence, he abhors it, and throughout his Sermon asserts the doctrine of Non-Resistance; which is quite contrary to this part of the charge, although he conceives it to be the ground of the impeachment. Sure there is not any one passage, that tends to excite the subjects to arms, in his Sermons.

My lords, there was notice taken of a passage (that has little in it) exciting Christians to put on the whole armour of God: But sure that is distinguished from the arms of flesh and blood: It cannot be so misinterpreted, as to be understood of any earthly power whatsoever; for as it is in the Scripture, so it is in the Doctor's Sermon, the whole armour of God, patience, submission, &c. This is the armour he exciteth Christians to put on; nothing of fleshly arms.

As to the charge of perverting several texts of Scripture, to make ill impressions on the people; he denies it, and had no ill impression to make on any person whatsoever: His work was to do good, and make good and religious impressions on his hearers. But he thinks it hard, when he cites texts of Scripture against vice and immorality, by a construction in prejudice of the preacher, those texts should be said to be applied to particular persons. The story of the prophet, in the second book of Kings, chap. vi. as printed in the Doctor's Sermon, is mistaken; but the two reflections made upon it, are very unnatural and not credible. The first inference was, that he had it by hearsay, and that he had not read it. Sure your lordships cannot think, but that he, that is a Doctor of Divinity, has read every chapter in the Bible: He, that has been a student in the university of twenty years standing, and more, and constantly keeping to the Church, certainly none can think but he has read the Bible. But then it is turned the other way upon him; that taking it to be so, then he represents himself to be the prophet that could see the danger, and makes the Lords and Commons the people that were blind.

My lords, this, I suppose, was intended to be wittily said; but if it be seriously (and without raillery) considered, there is no wit or sense in it. He mentions not the Lords and Commons at all; but it is true, he, as a preacher, warns the people to have their eyes open, to see the dangers of sin and vice; so that we apprehend, there is no ground from that passage, to charge the Doctor with corrupting the Scripture.

My lords, the next text that is quoted against the Doctor upon this head, is, Blow the trumpet in Sion; sound an alarm. Now it is urged by the gentlemen managers, that this can be for nothing but for war; and this (it is pretended) was only to be done in time of war, when the priests with the silver trumpets were to sound in battle. But, my lords, this cannot have that construction; for whoever looks into the Scripture, particularly into the prophet Joel, and other places, (where that expression is used) will find it to proclaim a fast: They were to blow the trumpet to signify the generality, and that all should take notice of it. The allusion is carried by an elegancy to the trumpet, to shew the generality of it, and that all the people should humble themselves before the Lord. Now, to make this sedition to infer it to be to excite the people to war and rebellion, is not right reasoning, nor is there the least colour for it.

Another quotation he makes, is much pressed upon the Doctor, where speaking of the Church, he cites that passage out of the Lamentations: 'Her adversaries are chief, and her enemies at present prosper.' This is pressed upon us, as if the Doctor had an eye in it on the ministry. But this, we think, is straining the words beyond their sense or meaning: For, first, he does not say her adversaries are the chiefest, but in the lowest degree of com-

parison, her adversaries are chief; that is, that amongst her adversaries there are some considerable persons, some men of estates and figure. And this, I think, appeared yesterday in pamphlets that were read, some whereof are supposed to be wrote by no mean persons; the Doctor cites the words of Scripture, and we think it can have no ill construction. As to the second part of the expression, Her enemies at present prosper, they are the words of the prophet; and how true in the present case, we must submit to your lordships, upon what has been already offered, whether any ill construction can, or ought to be made of them? Neither the first nor second part of these words are determined to any particular persons; we cite the words themselves; they are not determined to any person whatsoever; and so we hope no offence can be taken at them, nor any such inference drawn from them, as hath been endeavoured to be represented to your lordships. The Doctor declares in his Sermon, as we formerly mentioned, and read to your lordships, that he hoped what he had spoken would be without any offence, as it proceeded from an honest and good intention, and a tender concern for her majesty's person and government, and an hearty zeal for the honour and safety of our excellent Church and constitution: And so we hope your lordships will construe and intend it. And so we submit this Article, and the Doctor's Defence, with all humility, to your lordships. We shall read no more than two or three proclamations; the first is against vice and immorality, and to stir up magistrates to take care to execute the laws. A second takes notice that her majesty's commands had not been obeyed, nor the laws executed to suppress vice, and commands the magistrates to be careful to do their duty herein: And thirdly, a direction that this proclamation shall be read to the people out of the desk. And sure the reading them there, and preaching them, or the subject matter of them in the pulpit, are consistent together.

Mr. *Phipps.* My lords, we are now humbly to offer to your lordships' consideration, our answer to the fourth and last Article of the Impeachment, to which we think there is no necessity of giving any answer, because we humbly apprehend there is not any offence charged upon the Doctor in that Article; for the Article saith, that the Doctor doth falsly and maliciously suggest, &c. Now to suggest can amount to no more than to insinuate, and is far short of an averment or assertion; and whether a bare suggestion or insinuation can be a sufficient foundation to ground an Impeachment, is humbly submitted to your lordships. But since it is made an Article against the Doctor, we humbly hope we shall give as full an answer to the suggestions and insinuations contained in that Article, as we have to the offences charged in either of the other Articles.

The first part of the Article saith, "That the Doctor doth falsly and maliciously suggest that her majesty's administration, both in ecclesiastical and civil affairs, tends to the destruction of the constitution." In answer to which it is humbly offered, that the Doctor doth not any where mention her majesty's administration, either in ecclesiastical or civil affairs. He esteems it one of the greatest blessings and deliverances, "That her majesty now happily sits on the throne of her ancestors; he prays, that God would long preserve her for the comfort and support of the Church; he professeth, that what he speaks proceeded from a tender concern for her majesty and her government, and an hearty zeal for the honour and safety of our excellent Church and Constitution; he solemnly declares, that his only aim and intention was earnestly to contend for the safety, rights and establishment of her majesty, together with those of the Church." And how, after all this, it can be inferred he suggests that her majesty's administration, in ecclesiastical and civil affairs, tends to the destruction of the constitution, I cannot imagine. I humbly submit, whether such a charge can be inferred from his Sermons, without carrying innuendoes farther than ever hath been attempted.

As for that part of the fourth Article, which chargeth, that "The Doctor doth suggest that there are men of characters and stations in the Church and State, which do themselves weaken, undermine and betray, and do encourage and put it into the power of others, who are professed enemies, to overturn and destroy the constitution and establishment:" The Doctor denies he suggesteth any such things concerning men of characters and stations.

I cannot but observe what art hath been used to make up this Article, and I do not doubt but your lordships will be of that opinion; for the Doctor in page 22, mentions men of characters and stations, but does not mention men of character and station in Church or State; but says, "There are men of characters and stations that shift and prevaricate with their principles, and start from their religion upon any occasion of difficulty." Which is a charge upon them in their private capacity, and does not charge them with any misbehaviour in their stations, or in any thing relating to the public administration; nor does he mention in that place their weakening, undermining and betraying, or the encouraging or putting it in the power of our professed enemies to overturn and destroy the constitution and establishment.

And in page 15, where he mentions "The weakening, undermining and betraying in themselves, and the encouraging and putting it in the power of our professed enemies to overturn and destroy the constitution and establishment of both:" There he does not mention men of character and station, but chargeth the weakening, &c. on the False Brethren in Church and State; so that he thinks it very hard that a part of one sentence in page 22,

should be brought back seven pages, and coupled with part of another sentence, page 15, and put together as one sentence, to make an Article of High Crimes and Misdemeanors; whereas one of the sentences hath no manner of relation to, or dependance upon the other, and neither of the sentences alone can amount to, or be charged as a High Crime and Misdemeanor.

By this method they might have charged him with high treason, or any other crime. Nay, my lords, by this transposing and altering of sentences, by taking a part of one sentence and coupling it with part of another, they may make the Scripture itself speak blasphemy.

But suppose it had been one entire sentence, had this been a ground for an impeachment? By men of characters and stations, must men of the highest characters and stations be necessarily understood? No, my lords: Are not inferior officers, even constables, mayors, justices of the peace, officers of the militia, deputy-lieutenants, officers of the army, officers of the customs, and other branches of the revenues, all men of station? And are not some of the stations very good ones? And are not many of the persons that enjoy them men of characters too? And if among all these there may be found some whose consciences are so tender, that they think it a sin to communicate with the Church upon any other account than to qualify themselves for their offices and stations; and such who vilify her orders, calumniate, misrepresent and ridicule her priests and professors: Is it a High Crime and Misdemeanor in the Doctor to call such persons False Brethren, and to suggest that they are enemies to our constitution, and that they endeavour to weaken and undermine it? And yet this is all that can be inferred from these two pieces of sentences put together, to form this Article. And does this bring the least blemish or reflection on the ministry, or those of the highest character and stations in the Church? By no means: For the ministry presumes that men in those inferior stations are well-affected to our constitution, when they qualify themselves according to law, by taking the sacrament and oaths; and if any of them are not so, it cannot be presumed to fall under the notice of the ministry: And in many cases, if they did know it, yet it would not be in their power to redress it. I remember one instance, in an eminent borough in this kingdom. It was proved, at the hearing of an election for that borough, that the mayor declared, that no person should be admitted into the corporation, and qualified to vote for members of parliament, but such as were Dissenters from the Test; so that there may be mayor, aldermen, and the whole corporation who may take the sacrament in the Church of England, and the oaths, and yet every one Dissenters: And they may elect persons into much higher stations, if they please, which are equally disaffected to our Church, and it is not in the power of her majesty or the ministry to help it. And when there are such found among us, whether the Doctor, when he chargeth them for being False Brethren, can be said to reflect on the ministry, can be said to be guilty of High Crimes and Misdemeanors, I submit to your lordships.

The learned gentleman who spoke first to this Article, seemed to allow that men of the highest characters and stations were not intended; but he objected, that to charge the inferior magistrates with a neglect of their duty, is charging the government with mal-administration; in which I cannot concur with him. But as this case is, I take it to be plain, that to charge inferior officers or magistrates with a neglect of their duty, cannot reflect on her majesty's administration; for there are magistrates which her majesty cannot remove; there are neglects which her majesty or her ministry cannot be presumed to know, as I before mentioned. And to set this in a true light, and to give a full answer to this objection, we have her majesty's authority to vindicate the Doctor in this point; for her majesty chargeth the magistrates with a neglect of their duty, and carrieth the charge higher than can be inferred from the Doctor's Sermon, I mean the several proclamations that have been issued by her majesty, by the advice of her privy-council (which are her ministry) for suppressing profaneness and immorality. Those proclamations take notice of the several acts of parliament against profaneness and immorality, and charge the inferior magistrates with a neglect of their duty, in not putting those laws in execution. And is it an offence for the Doctor to mention that in his pulpit, which hath been so often repeated by her majesty under her great seal?

It has been objected, that the Doctor, speaking of the Church, says, that her adversaries are chief. This is a quotation out of Scripture, which signifies that they are mighty; but that this reflects on the ministry, or her majesty's administration, I cannot apprehend.

But it is also objected that the Doctor, page 5, saith, "That the communion of the Church hath been rent and divided by factious and schismatical impostors," &c. Is the saying this is done with impunity, a reflection on the administration? That blasphemy, atheism and profaneness have been justified in print; that the worship and discipline of the Church hath been profaned and abused, her orders denied and vilified, her priests and professors calumniated, misrepresented and ridiculed; that trumpets have been sounded to rebellion; that her majesty and her whole administration have been reflected on, I think was sufficiently proved to your lordships yesterday; and that it hath been done with impunity hitherto, I believe will not be denied, for I have not heard that any of these bold offenders have yet been punished; and that the inferior magistrates have neglected their duty in that respect, we have her majesty's authority for it. But that this is a reflection on her majesty, or her ministry, is totally denied; for the execution of the laws against such offenders is within the province of

inferior magistrates; and God forbid that the faults of inferior magistrates should be charged upon her majesty. The several proclamations issued out by her majesty, by the advice of her privy council, shew, her majesty and her ministry have done all that in them lies to suppress blasphemy, profaneness, and other vices: and that the fault and neglect lies entirely at the door of the inferior magistrates; and this sufficiently answers the objection, that what is charged upon inferior magistrates cannot reflect on her majesty, or her ministry. And this is also a full answer to that part of the fourth Article, which accuseth the Doctor with charging her majesty, and those in authority, both in Church and State, with a general mal-administration; to which I would only add what the Doctor hath said in his answer to this Article, viz. "That he abhors the thoughts of bringing any charge against her sacred majesty, whom he never mentions but in terms of the profoundest duty and respect; that he doth not charge those in authority with any mal-administration: that he doth not so much as mention the word mal-administration, nor any other word synonymous with it, or from whence it can be inferred, or in which it is or can be implied."

As to such part of the fourth Article, which chargeth, that "The Doctor, as a public incendiary, persuades her majesty's subjects to keep up a distinction of factions and parties;" he invites the Dissenters to leave their schism, and come sincerely into the Church: He complains of those who have villainously divided us with the knavish distinctions of High and Low Church. He wishes we were all one fold under one shepherd; and that all those invidious distinctions, that distract and confound us, were lost.

If wishing that people would leave their schism, and come sincerely into the Church; that we were all one fold under one shepherd, makes a man a public incendiary; if blackening those that divide us with knavish distinctions with the character of villainous; and wishing that all those invidious distinctions which distract and confound us were lost, be to keep up distinctions of factions and parties, the Doctor is guilty; but if not, then he conceives there is nothing in his Sermons which can be a foundation for the charge in this branch of the fourth Article.

But it hath been objected, That though the Doctor invites the Dissenters to come into the Church, yet he invites them upon his own terms: And I hope, my lords, they shall never come in upon any other terms than their conforming to the doctrine and discipline of the Church. I hope I shall never see the constitution of our Church weakened, and her pales and fences broken down, to let her enemies into it.

As to the other part of the Article, which chargeth the Doctor with instilling groundless jealousies, and fomenting destructive divisions among her majesty's subjects, there is no foundation for it; for, on the contrary, he rebukes and condemns those who by false insinuations, and raising groundless jealousies and fears, embroil and bring it into confusion.

As to that part of the fourth Article, which chargeth, "That the Doctor excites and stirs up her majesty's subjects to arms and violence;" if preaching up Passive Obedience be to stir up people to rebellion; if preaching up the illegality of Resistance be to excite her majesty's subjects to take up arms against her, I own there is a sufficient ground in his Sermon for this charge; but otherwise, there is not one passage in the Sermon to warrant this accusation.

I do admit, the Doctor, in the last page of his Sermon, hath this exhortation of St. Paul's, "Put on the whole armour of God, that ye may be able to stand against the wiles of the devil; for we wrestle not only against flesh and blood, but against principalities, against powers, against the rulers of the darkness of this world, against spiritual wickednesses in high places." I pray, my lords, what is it that the Doctor in the words of St. Paul advises his auditors to resist? Is it not the wiles of the devil? With what armour are they to resist? It is with the armour of God. What is the armour of God? Are guns, or swords of iron or steel, the armour of God?

The learned manager that spoke to this point said, the Doctor could not mean the spiritual armour, because he departed from the Apostle's spiritual meaning. And to make good this charge, he useth the same method that was taken to make up the first part of this Article; for the words cited by the Doctor, are in the 11th and 12th verses of the 6th chapter of St. Paul to the Ephesians; and to find out the Doctor's meaning, he goes back to the 31st verse of the 4th chapter, where St. Paul saith, "Let all bitterness, and wrath, and anger, and clamour, and evil-speaking be put away from you, with all malice." And why this should be alleged to shew what the Doctor means, when in the words of St. Paul he adviseth his auditors to put on the armour of God, I cannot imagine. If he had read but two verses after those words cited by the Doctor, he would have found the armour of God to be the sword of the spirit, the shield of faith, the breast-plate of righteousness, and the helmet of salvation; and the Doctor could mean no other armour: and how her majesty, or those in authority under her, can be resisted by this armour, or what violence her majesty's subjects can use with these arms, I submit to your lordships. It is plain, that the principalities, powers and rulers here meant, are not earthly principalities, powers and rulers; but the principalities, powers and rulers of darkness, against which swords and guns are but a very weak and feeble defence. These things being considered, I think there is nothing to be collected from this paragraph, that can excite her majesty's subjects to arms and violence; unless it be, to take the armour of God, to resist the

devil and all his works; which, I hope, is not a High Crime and Misdemeanor.

As a further evidence that the Doctor excites her majesty's subjects to arms and rebellion, it is objected, That the Doctor in his Sermon, page 26, says, "Let us therefore, being well assured how much our cause deserves, and how much at present it requires our bravest resolutions, hold fast our integrity and religion without wavering, and earnestly contend for the faith which was once delivered to the saints." And is not this wholesome and religious advice? The more strongly and openly the cause is oppugned, the braver resolution it requires to defend it. The cause of Religion is attacked by Atheists and Deists; the cause of Monarchy, by asserters of republican and seditious principles; the cause of the Church, by Papists and Sectaries of all sorts; and therefore it requires our bravest resolutions to defend the Church, the queen, and the constitution, with the same zeal they are attacked, as the Doctor explains himself; "Not doubting, if we shew the same courage, and indefatigable zeal and labour to defend, as our adversaries to reproach, divide and ruin our Church; neither their united malice nor power, nor all the plots and machinations of Rome, nor the very gates of hell itself, shall ever be able to prevail against her." And shall this be construed to excite her majesty's subjects to arms and violence?

As to the last part of the Article, which chargeth, That the Doctor doth wickedly wrest and pervert divers texts of Holy Scripture: it seems, the printer of the second edition mistook one text. If the Doctor had perverted, or wickedly wrested the text, he must have been subject to a prosecution in another place; but it would not have been a ground for an impeachment of High Crimes and Misdemeanors.

To conclude. My lords, if condemning the dethroning and murdering the royal martyr king Charles the first, be to cast black and odious colours on his late majesty and the Revolution; if the averring the utter illegality of Resistance to the supreme power in all things lawful; if preaching the doctrine of Passive Obedience and Non-Resistance, which hath been enjoined by our Church, and confirmed by the legislature, and is the doctrine of all Christian churches, shall be construed to be a reflection on the Revolution, and a greater reflection on it now, than the preaching of the same doctrine was in the reign of his late majesty, who was the happy instrument of that Revolution: if the Doctor be a criminal for preaching that doctrine which the right reverend fathers of our Church, and other eminent divines, have preached, with the approbation and applause of the crown, and both Houses of Parliament; then the Doctor is guilty of the High Crimes and Misdemeanors in the first Article.

And if to wish that Dissenters, who qualify themselves according to the Act, may enjoy the full benefit of it; if to desire the laws to be put in execution against such who will not comply with the terms prescribed by the Act, and against Atheists, Deists, and such who frequent no religious worship at all, and are particularly excepted out of the Act of Toleration; and if to assert, that a sentence ratified in heaven cannot be reversed on earth, be to affirm the Toleration unreasonable, and the allowance of it unwarrantable; then the Doctor is also guilty of the High Crimes in the second Article.

And if to assert the prejudice the Church receives by schism and occasional conformity; if the shewing the heavy judgments which may be brought down upon a church and nation, by blasphemy, atheism, profaneness and immorality; if to shew the danger the queen and Church are in, by the rebellious principles that are daily broached and published, be to assert the Church is in danger under her majesty's administration; the Doctor is likewise guilty of the crimes in the third Article.

And lastly, if to pray for her majesty's long continuance on the throne, for the comfort and support of the Church and Nation; if to shew that the laws against atheism, blasphemy, profaneness and irreligion, be not put in due execution by inferior magistrates; that is, if to assert in his pulpit what her majesty, by advice of her ministry, hath asserted in four proclamations, be to reflect on her majesty and her ministry, and to charge her majesty with mal-administration in Church and State; and if exhorting the people to put on the sword of the spirit, the shield of faith, the breast-plate of righteousness, and the helmet of salvation, to resist the devil, and all the powers of darkness, be to excite her majesty's subjects to arms and violence against her majesty; and if preaching up Passive Obedience and Non-Resistance, is to stir up people to rebellion; then the Doctor is guilty of the High Crimes and Misdemeanors in the fourth Article; especially, if strained, foreign and unnatural inferences, insinuations and innuendoes are to pass for proof: but otherwise, I presume to say, the Doctor is not guilty of any of the offences charged in either of the Articles; and I humbly hope, your lordships will be of that opinion.

Mr. *Dee.* My lords, this Article is short of the former Articles, in the manner of the charge. The first part of it is a charge upon the Doctor, That he suggests only, that her majesty's administration tends to the destruction of the constitution. As to this part of the Article, (as has been observed) there is no passage in the Sermon mentioning her majesty, but with the greatest respect, and with hearty prayers for her. The words, ministers and ministry, are not found in the whole Sermon: therefore, to find any charge on them by the Doctor, we must look to the second part of the Article, which charges the Doctor with suggesting, That there are men of character and stations, who are False Brethren, and do undermine the constitution, and endeavour to betray the Church; and consequently charges her majesty with a general mal-administration.

My lords, as to this part of the charge, viz. That the Doctor doth suggest, that men of characters and stations are underminers of our constitution, it is not to be found in any part of the Sermon: but if he doth suggest, that men of characters and stations (not saying of what characters, or what stations) are False Brethren, (if your lordships take notice what those men are, whom the Doctor calls False Brethren) it will not be a sufficient ground for a charge of High Crimes and Misdemeanors. There are four sorts of persons that the Doctor charges as False Brethren: those that propagate false doctrines; those that give up the discipline of the Church; those that are for a neutrality in religion; and these that own themselves to be of the Church, but live not according to her rules. Now, to say that there are some men of character and stations in the nation that are False Brethren, within some one or other of these descriptions, I wish I could say it was not true. But when the Doctor comes to charge some persons as underminers of the Church and Constitution, they are described to be either those persons that subvert the fundamentals of religion, as Atheists, Deists, Socinians, and such like; or Occasional Conformists, persons that creep into the Church, only with a design to do it a mischief. And I think these persons may be justly said to be underminers of the Church.

My lords, there is a general charge against the Doctor, that he excites the people to rebellion. If this could be naturally inferred from his words, he must be guilty of self-contradiction, and ought rather to be pitied as a weak, foolish man, than punished as a cunning incendiary. For when he hath so positively affirmed the utter illegality of Resistance to the supreme power, if any thing had dropped from him in the same assembly tending to rebellion, he would have exposed himself to the utmost ridicule.

My lords, some things have been observed out of the preface to his Sermon at St. Paul's: one expression is that of sounding a trumpet. I should not have thought this worth taking notice of, but that some of the gentlemen did lay some stress on it, as if this were sounding an alarm, exciting people to arms: but I conceive, that the words out of the mouth of the Doctor, bear the same sense as out of the mouth of the prophet. But for fear that he should be misconstrued, the Doctor explains himself by the words immediately following, and shews, that such prohibition or restraint laid on the clergy, as are there suggested, are expressly contrary to the command of God. His words are these: "We are told by these men, who would shut both our eyes and our mouths, in order the more effectually to undermine and destroy us, that the pulpit is not a place for politics; and that it is the business of a clergyman to preach peace, and not sound a trumpet in Sion; so expressly contrary to the command of God, to cry aloud, and spare not." So that these words do plainly interpret what the Doctor meant by sounding a trumpet.

My lords, there was another thing taken notice of from this preface, and that was the encouragement he gives to people to arms and violence, against such as would destroy the Church, &c. The words of the Doctor are these: "If honest men will sit still, and give up their cause through want of courage, or a just sense of the dangerous attempts of our enemies; we may, without the spirit of prophecy, foretell what will become of our constitution, when it is so vigorously attacked from without, and so lazily defended from within." This was looked upon as dividing the people, and exciting them to make Resistance. But if the gentlemen had looked a little before, in the same paragraph, they would have found who the assailants he mentions were; and then they would not, I conceive, have blamed the Doctor for encouraging the people to make a vigorous defence. The assailants are those that make rebellious appeals to the people, as the only judges of right and wrong, and the dernier resort of justice and dominion: these, he says, are the fashionable methods now made use of to undermine the Church and Legislature, by breaking in upon the prerogative of the crown, by threatening them with imaginary legions and a popular tribunal, where their authority is to be tried and determined. To put a stop to this thing, is what he says is the intent of his discourse. Now if these are the persons that attack the constitution, that appeal to the people as the only judges of right and wrong, if these are the assailants, surely the Doctor may encourage the people vigorously to defend themselves against them.

My lords, there was one thing more taken notice of by the gentlemen managers, that the Doctor had given great offence to the Commons, by an expression he has made use of, by way of exclamation, in the close of his Answer to the Articles; and that runs thus: "Hard is the lot of the ministers of the gospel, if, when they cite the word of God in their general exhortations to piety and virtue, or in their reproofs of men's transgressions, or where they are lamenting the difficulties and conflicts with which the Church of Christ, whilst militant here on earth, must always struggle; the several texts and passages by them cited, shall be said to have been by them meant of particular persons and things, and shall be construed in the most criminal sense, and be made by such construction one ground of an Impeachment for High Crimes and Misdemeanors." If this supposition, as the Doctor has put it, be turned into a position, he hopes you will pardon him for his exclamation. If generals have not been tied to particulars, to make up these Articles, then the Doctor had no reason to make this exclamation: but if the Doctor's Sermon hath been so treated, in order to frame the Articles against him, then he is not blamable for that expression.

My lords, the Doctor has never before been charged with disloyalty to the government: he hath always been a man of that probity, and of so blameless a life and conversation, that he

hath not been so much as attacked on that account. And when a man of his character is brought before your lordships, for a Sermon preached in a public congregation, for a doctrine that is the doctrine of the Church of England, and for which he has the authority of so many of the fathers of that Church, as well as of many of her learned sons: for him I say, to be brought before your lordships (by an Impeachment) on that account, surely he may be allowed to say this: his lot (at least) is hard that he should be made the first, and so solemn example; when he only followed so many and great examples, as have been set him from the beginning of the Reformation down to this time. And when your lordships consider the circumstances of the Doctor, I hope your lordships will think, that the defence of this prosecution, must be a sufficient punishment for any crimes he is charged with, and of which he can be supposed guilty: and so I submit him and his cause to your lordships' justice.

Dr. *Hanckman.* My lords, in the general preamble to the Articles of Impeachment, Dr. Sacheverell is said to have preached and published two Discourses, with an intention to defame her majesty's administration; and this last Article contains several particular charges of a very high nature, and great malignity, against her majesty's happy administration.

For a general answer to this Article, I must beg your lordships' patience, to look back again upon those passages of this Sermon, which I humbly offered to your lordships' consideration under the third Article, which will set the Doctor's intentions in a clear light. In one of them, he readily acknowledges the great blessings we at present enjoy, by her majesty's happily sitting on the throne of her ancestors: and in the other places where he mentions her majesty, it is with great respect, and hearty address to God, long to preserve her on that throne; and at last concludes with this solemn protestation; that what he had then spoken, proceeded from a good intention, and tender concern for her majesty's person and government, and a hearty zeal for the honour and safety of our excellent Church and Constitution.

My lords, some regard is to be had to the declarations of every honest man, in relation to his own thoughts and intentions, which are known only to God and his own conscience: and certainly, when a priest of the Church of England does, in the presence of God, and the face of the congregation, solemnly declare, that what he speaks is with a tender concern, and hearty zeal for her majesty's person and government; no loose words or distant and unconnected expressions ought to be construed to a direct contrary sense of so express a declaration. My lords, the sense of these words is plain and obvious to every man's understanding: but if a passage in the 22nd page of this Sermon, in itself, and as it stands in its proper connection (not criminal), must be construed by what is said in the 15th page, little relating to the same purposes, and both these passages explained by a third still farther distant; by such a method the most inoffensive discourse may be made blamable, and it will be very difficult to make any defence.

My lords, it has been objected by the learned managers, that the Doctor chose an unseasonable time and an improper place, to vent his notions in. But how does it appear, that either the one or the other was of his own choice? Does it not rather appear, that he was called to perform that duty by the public magistrate; and that both the time and place were of his appointment? Or how can it, at this time, be thought unseasonable, to maintain the doctrine of our Church, when such swarms of infamous libels are daily published in opposition to it? Or what place can be more proper for this purpose, than that in which such libels usually first appear, and most prevail? Whether the Doctor performed his duty by preaching that doctrine there, which the Rubric of our Liturgy expressly commands him to teach on that day, must be submitted to your lordships: and certainly it will always be thought proper, on that day, that our Church and State were delivered from a most horrid conspiracy, to preach against the sin of rebellion: upon that day that the whole nation was delivered from a popish conspiracy, it will always be proper to shew, that resistance of the higher powers is the doctrine of Papists, and first proceeded from them. It is well known to your lordships, what the general duty of ministers obliges them to; but upon state-days, when they are commanded by supreme authority, and directed by the rubric what subject to treat of; it would be contempt in them not to obey the commands of their superiors, or not to insist upon that doctrine which they are peculiarly ordered to explain. And I humbly apprehend, that those reverend prelates, some of whose expressions were lately read to your lordships, would not have received the thanks of this honourable House, if they had not adapted their discourses to the solemnity of that day, which they then celebrated.

My lords, upon general view of this and the other Articles, the whole charge will appear to be supported, not by any one plain proposition, but by inferences and supposed constructions. It has been my endeavour, under every Article, to lay before your lordships one or more clear passages of this Sermon, which sufficiently declare the author's intention as to that Article; and I must leave it to your lordships' consideration, how far an insinuation or inference will be outweighed by an express declaration. If there are any words in this discourse which seem to bear a doubtful meaning, your lordships will in all cases incline to the most favourable side; and, in this particular, the character and function of a minister will deserve some more than ordinary allowance. My lords, it is a known rule in the Roman law, 'In ambiguis orationibus maxime sen-

'tentia spectanda est ejus qui eas protulisset.' Wherever words are capable of a double construction, there the intention of the speaker is chiefly to be looked after, and attended to. Every man has a right to explain his own intentions; and the darker and more obscure expressions of his discourse must be construed by those passages which are more plain and explicit. This is a rule in all civil and common cases between man and man; but in criminal cases, there that law exacts a stricter and a nicer proof: wherever the life or liberty of a citizen is concerned, there the proofs ought to be 'luce meridianâ clariora,' as evident as the sun at noon-day, and such as will convince every one at first sight.

My lords, I mention these maxims of the Roman law only as they are agreeable to the common sense and understanding of mankind, as rules of reason and equity, which your lordships have always governed yourselves by, and always will. The last of them I mention with the greater confidence, because I find it has once already received the sanction of this honourable House, in sir Samuel Barnardiston's Case; in which it is declared, That innuendoes or supposed constructions ought not to be allowed; for all accusations should be plain, and the crimes ascertained. This, my lords, has once been the resolution of this honourable House, and we humbly hope your lordships will not depart from a precedent so well established. My lords, one part of this last Article is, that the Doctor has wrested several texts of Scripture to seditious purposes; but it has not yet appeared that he ever harboured one seditious thought: whether he has perverted any texts of Scripture will be best explained by himself, when your lordships shall be pleased to hear him.

Mr. *Dodd.* My lords, we desire to read two or three proclamations: The first is to direct the magistrates to put the laws in execution against profaneness and immorality; and that not being duly observed, the second proclamation takes notice thereof, and directs the magistrates to put the same in execution: and there are two subsequent proclamations to the same purpose.

Clerk reads.] "By the Queen, A Proclamation for Restraining the spreading False News, and Printing and Publishing of Irreligious and Seditious Papers and Libels.

"ANNE *R.*

"Whereas by an act of parliament made in the third year of the reign of king Edward the first, it is enacted, that none be so hardy to tell or publish any false news or tales, whereby discord, or occasion of discord or slander may grow between the king and his people, or the great men of the realm; and that he that doth so, shall be taken and kept in prison until he hath brought him into court which was first author of the tale. And by another Act made in the second year of the reign of king Richard the second, it is declared, that the devising, speaking, and telling such false news and tales, was likely to occasion great peril and mischief to, and the quick subversion and destruction of this realm: for the preventing whereof, it is thereby enacted, that none be so hardy to devise, speak or tell any false news, lies, or other false things, of prelates, noblemen and officers of the crown therein named, whereof discord, or any slander, might arise within this realm, under the pain ordained by the said statute of king Edward the first. And by another Act made in the twelfth year of the reign of the said king Richard the second, it is enacted, that when any such shall be taken and imprisoned, and cannot find him by whom the speech be moved, that he shall be punished for such his offence. And whereas the preventing of the spreading and publishing of false news and tales, and the writing, printing and publishing of heretical, blasphemous, irreligious, treasonable, seditious and scandalous books, pamphlets, libels and papers, is a matter which requires our public care, and is of great concernment; especially considering, that by reason of the general licentiousness of the times, since an act for preventing abuses in printing seditious, treasonable, and unlicenced books and pamphlets, and for regulating of printing, and printing-presses, made in the 13th year of the reign of our late royal uncle king Charles the second, and continued by an act made in the 4th year of the reign of the late king William and queen Mary, expired, many evil disposed persons have written, printed and published divers heretical, blasphemous, irreligious, treasonable, and seditious books, pamphlets, papers, and many false, infamous and scandalous libels, and do continue such their unlawful and exorbitant practices, endeavouring thereby to traduce and reproach the ecclesiastical and temporal government of this kingdom, and the public ministers of the same, and the proceedings and members of both Houses of Parliament, and other our loving subjects, to the high dishonour of Almighty God, and the endangering the peace of these kingdoms, contrary to the said statutes, and the common laws of our realm: we therefore (with the advice of our privy-council) do by this our royal proclamation charge and command all our subjects, of what state or condition soever they be, that they do not henceforth presume, either by writing, printing or speaking, to tell or publish any false news or tales, contrary to the statute before-mentioned; nor write, print, publish, or sell, or cause to be written, printed, published, or sold, any heretical, blasphemous, irreligious, treasonable, or seditious books, papers or pamphlets, or any scandalous libels, reflecting upon us, or upon the ecclesiastical or temporal government of this realm, or any of our public ministers or officers, or on the proceedings of either of our Houses of Parliament, or any the members thereof, or upon any other of our loving subjects. And we do hereby further declare, that we will proceed with the utmost

severity and rigour of law, against all such persons who shall be guilty of any the malicious and unlawful practices aforesaid: we being resolved as much as in us lies, to suppress the said enormities by a more strict and exemplary punishment of all such offenders herein, as shall hereafter be discovered: to the discoverers whereof we will give all due encouragement. And we do hereby straitly charge and command all and singular our judges, justices of the peace, sheriffs, mayors, bailiffs, and all other our officers and ministers whatsoever, to take effectual care for the speedy apprehension, prosecution and punishment of all such persons, who shall at any time hereafter be found offenders herein.

"Given at our court at Whitehall, the 26th day of March, 1702-3, in the first year of our reign.

"God save the Queen."

Mr. *Dodd.* Now read the second. Read the date first.

Clerk reads.] "Given at our court at St. James's, the 25th day of February, 1702-3, in the first year of our reign. By the Queen, a Proclamation for the Encouragement of Piety and Virtue, and for preventing and punishing of Vice, Profaneness and Immorality.

"ANNE *R.*

"Whereas on our accession to the throne, we thought fit, by the advice of our privy-council, to issue out our royal proclamation for the encouragement of piety and virtue, and for the preventing and punishing of vice, profaneness and immorality: and whereas we have been informed, that our laws mentioned in the said proclamation have not been executed according to our just expectation and commands: We most seriously and religiously considering, that it is an indispensable duty on us, to be careful, above all other things, to preserve and advance the honour and service of Almighty God, and to discourage and suppress all vice, profaneness, debauchery and immorality, which are so highly displeasing to God, so great a reproach to our religion and government, and (by means of the frequent ill examples of the practisers thereof) have so fatal a tendency to the corruption of many of our loving subjects, otherwise religiously and virtuously disposed, and which (if not timely remedied) may justly draw down the divine vengeance on us and our kingdoms: We also humbly acknowledging, That we cannot expect the blessing and goodness of Almighty God (by whom kings and queens reign, and on which we entirely rely) to make our reign happy and prosperous to ourself and our people, nor hope for the divine assistance to deliver us from the great and imminent dangers which our kingdoms, and the true Protestant religion established among us, are in this present juncture threatened with, without a religious observance of God's holy laws. To the intent therefore, that religion, piety, and good manners may (according to our most hearty desire) flourish and increase under our administration and government; we have thought fit (by the advice of our privy council) to issue this our royal proclamation; and do hereby declare our royal purpose and resolution to discountenance and punish all manner of vice, profaneness and immorality in all persons, of whatsoever degree or quality, within this our realm; and particularly in such as are employed near our royal person: And that for the greater encouragement of religion and morality, we will upon all occasions, distinguish persons of piety and virtue by marks of our royal favour. And we do expect and require, that all persons of honour, or in place of authority, will give good example by their own virtue and piety, and to their utmost contribute to the discountenancing persons of dissolute and debauched lives, that they, being by that means reduced to shame and contempt, for their loose and evil actions and behaviour, may be thereby also enforced the sooner to reform their ill habits and practices, and that the visible displeasure of good men towards them, may (as far as it is possible) supply what the laws (probably) cannot altogether prevent. And we do hereby strictly enjoin and prohibit all our loving subjects, of what degree or quality soever, from playing on the Lord's-day at dice, cards or any other game whatsoever, either in public or private houses, or other place or places whatsoever; and do hereby require and command them, and every of them, decently and reverently to attend the worship of God on every Lord's-day on pain of our highest displeasure, and of being proceeded against with the utmost rigour that may be by law. And for the more effectual reforming of all such persons, who by reason of their dissolute lives and conversations are a scandal to our kingdom; our further pleasure is, and we do hereby strictly charge and command all our judges, mayors, sheriffs, justices of the peace, and all other our officers and ministers, both ecclesiastical, and civil, and all other our subjects whom it may concern, to be very vigilant and strict in the discovery, and the effectual prosecution and punishment of all persons who shall be guilty of excessive drinking, blasphemy, profane swearing and cursing, lewdness, profanation of the Lord's-day, or other dissolute, immoral or disorderly practices; and that they take care also effectually to suppress all bawdy-houses, public gaming-houses and places, and other disorderly houses; and to put in execution the statute made in the nine-and-twentieth year of the reign of our late royal uncle king Charles the second, intitled, An Act for the better observation of the Lord's-day, commonly called Sunday; and also an Act of parliament made in the ninth year of the reign of our late dear brother king William the third, intitled, An Act for the more effectual suppressing of Blasphemy and Profaneness; and all other laws now in force for the punishing and suppressing any of the vices aforesaid; and

also to suppress and prevent all gaming whatsoever, in public or private houses on the Lord's-day; and likewise, that they take effectual care to prevent all persons keeping taverns, chocolate-houses, coffee-houses, or other public-houses whatsoever, from selling wine, chocolate, coffee, ale, beer, or other liquors, or receiving or permitting guests to be or remain in such their houses on the Lord's-day, (except in case of necessity and charity) as they will answer it to Almighty God, upon pain of our highest displeasure. And for the more effectual proceeding herein, we do hereby direct and command all our judges of assize and justices of the peace, to give strict charges at their respective assizes and sessions, for the due prosecution and punishment of all persons that shall presume to offend in any the kinds aforesaid; and also of all persons, that contrary to their duty, shall be remiss or negligent in putting the said laws in execution; and that they do at their respective assizes and quarter-sessions of the peace, cause this our proclamation to be publicly read in open court immediately before the charge is given. And we do hereby further charge and command every minister in his respective parish church or chapel, to read or cause to be read this our proclamation, at least four times in every year, immediately after divine service, and to incite and stir up their respective auditories to the practice of piety and virtue, and avoiding of all immorality and profaneness. And to the end that all vice and debauchery may be prevented, and religion and virtue practised by all officers, private soldiers, mariners, and others, who are employed in our service by sea or land; we do hereby strictly charge and command all our commanders and officers whatsoever, that they do take care to avoid all profaneness, debauchery, and other immoralities; and that by their own good and virtuous lives and conversations, they do set good examples to all such as are under their care and authority; and likewise take care of and inspect the behaviour of all such as are under them, and to punish all those who shall be guilty of any the offences aforesaid, as they will be answerable for the ill consequences of their neglect herein.

"God save the Queen."

Mr. *Dodd.* My lords, there are two subsequent proclamations pressing magistrates to put the laws in execution in this case; but they are to the same purpose, therefore I think we need not spend your lordships' time to read them: They are to the same purpose with the last, taking notice that the magistrates had not done their duty as required.

My lords, we have now done our defence; only we have only one petition to make, that your lordships would be pleased to hear the Doctor speak for himself. There are some things more proper for him to give an account of, than for his counsel. We apprehend the most proper time will be after the gentlemen managers for the House of Commons have replied; but we thought it proper to mention it to your lordships now, and humbly submit it to your lordships.

Mr. *Phipps.* My lords, the reason why we troubled your lordships with reading these proclamations, was to shew your lordships, that the inferior magistrates being negligent of their duty in putting the laws in execution against profaneness, her majesty put out another proclamation to quicken them to it; therefore, when the Doctor charges the magistrates with a neglect of their duty, it cannot be understood to be a reflection on the queen or the ministry, because you see what great care her majesty has taken: So that we think this last Article is sufficiently cleared by these proclamations. One thing, my lords, I think we have not troubled your lordships with, and that is the Journal of your own House in the case of sir Samuel Barnardiston: If the gentlemen of the House of Commons think it otherwise, we are ready to read it.

Sir *Joseph Jekyll.* My lords, I have the commands of the gentlemen employed in this service with me, to mention to your lordships, that they are under a great surprize, that the counsel for the Doctor should take upon them to propose to your lordships, that the Doctor might speak after the Commons' reply: I have instructions (since the Doctor's counsel have referred some part of the Defence to himself) to tell the Doctor, that if he has any thing to say for himself, now is his time before the Commons reply; the Commons claiming it as their right to speak last.

Mr. *Dodd.* My lords, we submit to it. Doctor, go on.

Dr. *Sacheverell:* My lords, the defence made by my counsel has been so full and particular, and the Trial itself drawn out into so great a length, that I should not add to your lordships' trouble by saying any thing for myself, did I not think, that in such a cause as this (wherein the doctrine of our Church, the dignity of that holy order to which I belong, and even the common interest of Christianity itself, are so nearly concerned) it becomes me not to be altogether silent.

For, my lords, it has been owned by some of the managers for the honourable House of Commons, that though I am the person impeached, yet my condemnation is not the thing principally aimed at. I am, it seems, an insignificant tool of a party, not worth regarding; the avowed design of my Impeachment is, by the means of it to procure an eternal and indelible brand of infamy to be fixed, in a parliamentary way, on all those who maintain the doctrine of Non-Resistance, said to have the clergy directed what doctrines they are to preach, and what not. And therefore, as insignificant as I am in myself, yet the consequences of my Trial (if rightly represented to your lordships by some of those gentlemen) are of the highest moment and importance.

Since I am the unfortunate occasion of

bringing these matters in judgment before your lordships, it will behove me, I think, after what has been pleaded in my behalf, by my counsel learned in the law, to say somewhat also for myself, in order to clear the innocence of my intentions, and remove that load of guilt and infamy, which may be laid upon me, should your lordships determine, (as, I trust in God, you will not) that the Articles of Impeachment exhibited, have been made good against me.

With your lordships' permission then, I shall lay before you some few general remarks, which in my humble opinion may be added to what my counsel have already observed, concerning the methods taken by the managers for the honourable House of Commons, to prove and support the Articles of their Charge. And shall then, with your lordships' leave, say somewhat severally to the Articles themselves, which may serve to remind your lordships of what my counsel before offered more at large, and with greater advantage.

My lords, the Charge brought against me in these Articles is of a very high and heinous nature; and had it been as clearly made out, as it has been strongly affirmed, it would justly have exposed me to a very severe sentence. But the more heinous the Charge is, the more evident and undeniable, I should think, the proof ought to be. And how, my lords, has this Charge been supported in the several Articles of it? By plain, direct, and express passages produced, and read to your lordships out of my Sermons; or by intendments, unnecessary implications, and strained constructions? By laying entire sentences before your lordships, and relying upon what was manifestly contained in them? or by piecing broken sentences, and conjoining distant and independent passages, in order to make me speak what I never thought of?

I am unacquainted, my lords, with the methods of legal proof, and little thought I should have had this occasion of enquiring into them. But, as far as I am able to comprehend any thing of this nature, I should think, that there cannot be a clearer indication that I am not guilty of having asserted what I am charged by the several Articles to have said, than that so many hours learning and eloquence have been employed in proving me to have said it. Had I really affirmed those propositions for which I am accused, my Sermons being before your lordships, the places wherein such propositions were directly contained might have been referred to, and read, with the same ease as my counsel referred to the passages contained in the several writings and sermons of the reverend fathers, and other eminent divines of our Church, wherein they taught the doctrine of Non-Resistance in the same extent as I maintained it, or in terms much stronger.

These passages produced by my counsel were barely read to your lordships: No argument, no colours were used, because none were necessary, to prove what propositions were laid down in those passages. Whereas, to prove me guilty of having asserted what is laid to my charge, after my Sermons and Prefaces were read to your lordships, much art and industry were used to persuade your lordships, that such assertions were really contained in them.

My lords, when my words were capable of two senses, the worst and most invidious, though at the same time the most strained and unnatural construction, has been always made of them. Nay, when my words were so plain and express, that it was impossible to put any criminal glosses or colours upon them, I have been accused of meaning the direct contrary to what I have said: and when I pressed the duty of allegiance to the queen, your lordships were told, that it was most certain I meant the Pretender.

To aggravate my guilt, I have been accused not only for what I am supposed to have said, but for what I am allowed not to have said: not only for what I have taken notice of in my Sermons, but for what I have passed by unobserved: I have been charged with negative crimes; as if what I omitted to say, had been omitted with design, and my silence itself were criminal.

These, my lords, are the methods, that have been made use of to prove me guilty of crimes, which if proved, might affect my liberty and fortune; no favourable allowances have been made to a minister of the gospel, discharging the duty of his function, and rebuking vice and irreligion with an honest and well-meant zeal, but sometimes perhaps carrying him into expressions too open, and unguarded. I could add, my lords, if such a complaint might not be thought improper from one in my circumstances, that, in the course of my accusation, I have been stiled a criminal, and treated as such by some of these honourable gentlemen with a degree of scorn and indignity, from which I hoped my sacred profession, my present unhappy condition, and a regard to this solemn and awful judicature, might have screened me.

But, my lords, I lay aside all complaints of this nature, and with your lordships' leave shall proceed to make some few short observations upon the several branches of the charge exhibited against me.

I am charged, my lords, in the first Article, with having maintained, that the necessary means, used to bring about the late happy Revolution, were odious and unjustifiable; in proof of which it has been urged, that I have in general terms asserted the utter illegality of Resistance to the supreme power upon any pretence whatsoever. My lords, the Resistance in that passage by me condemned, is no where to be applied to the Revolution; nor is it applicable to the case of the Revolution, the supreme power not being then resisted.

My lords, I neither expressly applied my doctrine of Non-Resistance to the case of the Revolution, nor had I the least thoughts of including the Revolution under my general assertion. I expressed this doctrine in the same

general terms, in which I found it delivered by the Apostles of Christ. I taught it as I had learnt it from the homilies of our Church, and as I was enjoined to teach it by the Articles of our religion. I used no other language, than what had been used by our first reformers, by a continued series of right reverend prelates, and other celebrated divines now with God, and by many of those venerable fathers, before whom I stand, and what is perfectly agreeable to the laws and statutes of this realm. I had little reason to apprehend that I could ever have been accused by the gentlemen of the House of Commons to your lordships as a criminal, or as an asperser of the memory of the late king, for preaching this doctrine; when others, who preached the same doctrine, in the same terms, before their late majesties, before our present gracious sovereign, (whom I pray God long to preserve!) before each House of Parliament, before this very House of Commons, have met with public approbation: but since it is my singular misfortune to be accused, for what others have received thanks, in some instances conveyed to them by several of the managers themselves, I do with all humble confidence rely upon your lordships' justice; not doubting but that the learned judges, if thought necessary to be consulted, will declare, what I have in this case asserted, to be warranted by law, and the right reverend the bishops will affirm it to be the doctrine of the gospel.

The doctrine I preached being the doctrine of the homilies of our Church, not expressed only in a few particular passages of those homilies, but perfectly agreeable to the whole tenor, the main scope and design of them; and those homilies being established by the thirty-nine Articles, as containing godly and wholesome doctrine; and those Articles being confirmed by the 13th of queen Elizabeth; and that statute being made perpetual and fundamental to our constitution by the late Act of Union; I leave it to your lordships to consider, how far the condemnation of me, on the account of that doctrine, may affect, and shake the present frame of the British constitution, in Church and State, and tend to dissolve the Union of the two kingdoms.

My lords, upon the second Article, I would humbly pray your lordships to consider, that I have no where in my Sermon shewn any the least dislike of the indulgence granted by law to the Dissenters; that, on the contrary, I have declared my approbation of it in the most express terms imaginable, which I beg leave once more to repeat to your lordships out of my Sermon preached at St. Paul's. "I would not (I there say) be misunderstood, as if I intended to cast the least invidious reflection upon that indulgence which the government hath condescended to give them; which I am sure, all those who wish well to our Church, are ready to grant to consciences truly scrupulous; let them enjoy it in the full limits the law hath prescribed."

My lords, this then was, and still is, my sincere opinion; nor am I conscious that I have uttered one word inconsistent with it. I have indeed blamed, and perhaps with some warmth and earnestness blamed, the abuses which men of no consciences have made of the legal exemption granted to consciences truly scrupulous: nor could I think that those reprehensions of mine, would have drawn upon me the displeasure of any sincere Christian, which were levelled against Hypocrites, Socinians, Deists, and such, as under the umbrage of that Act, which permits Protestant Dissenters, and those only, to serve God, every man in his own way, think themselves at liberty to be of no Protestant congregation, of no religion at all. I will farther ingeniously own to your lordships, that I had in my eye some abuses made of that Act by the Dissenters themselves; who, I am told, do (both pastors and people) rarely observe the qualifications prescribed by that Act; and who erect seminaries for educating youth in principles opposite to the doctrine, discipline, and worship of our Church: whereas that Act was intended for the ease of those, whose minds, through the unhappy prejudices of education, were already estranged from the Church; not, as I humbly conceive, to indulge men in taking the most effectual methods to propagate and perpetuate their schism.

My lords, of any favours to Dissenters granted, or intended by the law, I have no where complained. Of Toleration, a word unknown to our laws, and implying, as I am informed, much more than our law-givers designed, if I have said any thing offensive, I may, I hope, reasonably presume, that it will not be judged by your lordships in any wise to reflect on that Act of Exemption, which I have spoken of in terms, no ways, I think, misbecoming a good subject, or betraying any want of Christian moderation. Nor is there, my lords, any want of it, I conceive, in affirming that this Act, which relieves some Dissenters from legal punishments, to which they were before obnoxious, hath not any ways altered the nature of schism, or extinguished the obligations to Church-communion, which is an evangelical duty, incumbent on all Christians, by the rules of the gospel, antecedent to all secular laws, and can by no human power be dispensed with. The Church of England, my lords, imposes no unlawful terms of communion, as she certainly does not, then all separatists from her communion, will, notwithstanding the indulgence, continue to be guilty of schism; the consequence of which guilt may still rest upon their souls, however it may cease to affect their bodies or estates. For as no human law can render that lawful which God hath forbidden, so neither can it make that void, which God hath commanded.

My lords, I am accused, under this head, of maintaining, that "it is the duty of superior pastors to thunder out their ecclesiastical as

theme against persons entitled to the benefit of the Toleration;" I hope, it hath evidently appeared to your lordships, that I advance no such position. Sure I am, that my words do not in themselves carry such a meaning, nor does the connexion of my discourse require that sense, or easily admit it. Schismatics, my lords, are not the only persons against whom ecclesiastical censures may be denounced; the works of darkness, which I referred to, as fit to be reproved in that part of my Sermon, where I speak of these censures, are of the same kind with those mentioned by the Apostle, whose words I produced, aft 'lewd and immoral practices;' against these, my lords, and against heresies, and blasphemies (a black catalogue of which has been displayed before your lordships) I thought the anathemas of the Church would be well employed; such anathemas, I doubt not, my lords, would be ratified in heaven, and would therefore, by any power on earth, be irreversible.

As to archbishop Grindall, though I may seem to have used some undue asperity of expression concerning him, yet I charged him with nothing but what I had good grounds for, from our historians: it hath been made appear to your lordships, that, on the account of his nonconformity in Church government, he lived and died under the high displeasure of queen Elizabeth; and whether therefore he, or that glorious queen, shall bear the blame of his disgrace and sufferings, is with all humility submitted to your lordships.

I hope, my lords, I stand clear in your opinions, of the charge advanced against me, in the two first Articles; and as my own conscience acquits, so I trust your lordships will acquit me, of whatever is laid to my charge in the third.

My lords, I neither have suggested, nor do in my conscience believe, that the Church is in the least peril or adversity from her majesty's administration. So far am I from any such thoughts, that I am entirely satisfied of her being a most affectionate nursing-mother to it. But I hope I may say without offence, that the Church may be in peril from other causes, without any reflection upon her majesty's government, or any contradiction to her royal proclamation, and the Resolution of both Houses of Parliament four years ago. If the Church be in danger, when the Christian religion is evidently so, I hope it will be thought no crime to say, it has scarce ever been in greater danger than it is now, since Christ had a Church upon earth. For besides that deluge of profaneness and immorality, which overspreads the whole kingdom; besides the variety, and growing strength of those schisms which weaken and divide us, and of those heterodox opinions, and damnable heresies, which are daily published and propagated among us; I verily believe, that never were the ministers of Christ so abused and vilified, never was the divine authority of the Holy Scriptures so arraigned and ridiculed, never were infidelity and atheism itself so impudent and barefaced, never were such horrid blasphemies printed in any Christian state, from the foundation of Christianity to this day.

Out of the many instances of this kind, which, being ready at hand, I could have produced to your lordships, I have selected a few only; but those such, as I am persuaded your lordships could not hear without horror and astonishment. Pardon me, my lords, if my apprehension of the sad consequences we may expect from such crying abominations, have forced from me some expressions, which upon a less occasion might seem too harsh and vehement. A man that dreads no danger from such unparalleled iniquities, that do, as it were, call down God's severest judgments upon that poor Church and Nation, wherein they are openly and daringly committed, must be dead in his love for his country, and religion. If I have disclosed such a frightful and detestable scene of impiety, which by reason of your lordships' high stations and great employments, might possibly lie undiscovered to your sight before; I shall think myself happy, whatever shall befal me, if I may by God's grace become the mean instrument of putting a stop to that overflowing of ungodliness and blasphemy, which as yet no laws, no proclamations, how well soever designed, and how often soever repeated, have been able to restrain.

Nor ought I, my lords, to forget, though it was forgotten by the honourable managers, another ground of danger arising to this Church from the attempts of Popish emissaries, by me mentioned, I hope without the least offence, in my Sermon at St. Paul's; where I say, "It were highly to be wished that those excellent laws, made for the defence and security of the Church, were at present put strictly in execution, for the Roman Catholic agents and missionaries that swarm about this great city, as it were in defiance and contempt of them, were never more busy in making proselytes to their superstition and idolatry, and perverting and debauching her majesty's subjects in every corner of our streets." I have not, my lords, been called upon to prove the truth of this passage, nor hath it been reckoned among the false insinuations I have made that the Church is in danger. I pray God, the Church may be in no danger upon any of these accounts! Her Majesty, your Lordships, and the Commons, have indeed provided against these dangers by wholesome laws, and I hope, I did not exceed the limits of my function, when, being called to preach before magistrates, I exhorted them to prevent these dangers, by putting those laws strictly in execution.

Just had been the indignation of the honourable House of Commons, just would be your lordships' most severe resentments, if by any parallel by me drawn, I had insinuated that the members of both Houses, who passed the Vote concerning the safe and flourishing condition of the Church, had been then conspiring its ruin. I have already purged myself from this imputation, by observing, that the parallel, ascribed to me, implies, that they who voted

king Charles the first to be out of danger, and those who conspired his death, were the very same persons, whereas it is certain they were not; for, my lords, the Vote about the king's safety was passed by Lords and Commons a year and half before his execrable murder, which had been contrived by the army, and was perpetrated by a pretended ordinance of a small remnant of the House of Commons (not a tenth part of the whole), after the rest of the members had been imprisoned or secluded, and without the concurrence of the House of Peers, who totally rejected it. You have had, my lords, a very different representation of this fact made by one of the learned managers: but this, my lords, is the real truth, as recited in the act of parliament for the attainder of the king's murderers; and is an evidence, that I could not possibly mean, by any odious parallel, to insinuate, that the members of both Houses, who passed the Vote concerning the safety of the Church, were then conspiring its ruin.

I humbly crave your lordships' patience yet a little farther, whilst I speak to what is alleged in the fourth Article, which charges me with many crimes of a very high and flagrant nature; none of which have been endeavoured to be proved upon me, otherwise than from supposed suggestions, and undetermined expressions; and I must still, with your lordships' leave, humbly insist upon it, that where the expressions are doubtful, there the favourable sense is always to be preferred.

After all that has been said by the learned managers for the Commons, what minister of state, I beseech your lordships, have I been proved to reflect upon directly or indirectly? Where, and how do I, by any suggestion, charge her majesty, or those in authority under her, with a general mal-administration? How do I persuade her subjects to keep up a distinction of parties and factions, while I reprove those who divide us by knavish distinctions, and while I persuade my fellow-subjects to lose and forget them? How is it possible, I should stir up the people to arms and violence, when I am endeavouring to convince them of the utter illegality of Resistance upon any pretence whatsoever? These things, my lords, seem to be inconsistent, unless a man may be thought a rebel for recommending loyalty, or seditious for preaching against sedition.

I remember, indeed, at the opening of this charge against me, that one of the managers for the House of Commons, vouchsafed to offer his charitable assistance towards reconciling this seeming inconsistency; for he was pleased to suppose, that when I spake against resisting the sovereign, I had not our gracious queen, but some other person in view; and that I might therefore, agreeably to my principles of Non-Resistance, stir up the people to arms and violence against her sacred majesty. Your lordships will once more pardon my earnestness, if I call God to witness, that I utterly detest any such traitorous intention; and I should, in my own opinion, be unworthy of the name of a Christian, if I could give myself leave to cast such a black and groundless imputation upon any one in like circumstances with mine, who had given all possible evidences of his duty and affection to the present government. My lords, I have taken the Oaths of Allegiance to her majesty, and that of Abjuration against the Pretender; and when therefore I preached the doctrine of Non Resistance, it is most apparent, that the government, which I persuaded my fellow-subjects not to resist, is the present government: and I humbly conceive, that the present government can never be overturned, if it be never resisted.

How true a zeal and affection I have always borne to her majesty's person and government, I leave to be judged by your lordships, and the whole world, from those public demonstrations which I have given of it, at all times when I had occasion to make mention of either. I hope your lordships will pardon me, if I refer to some of my own printed expressions, as an evident proof of my unfeigned duty and allegiance. "If to call it the most inestimable blessing this nation could enjoy, that her majesty, the good and pious relict of the royal family, sits now happily upon the throne of her ancestors; if to pray that God may long preserve her for the comfort and support of the Church, as the only security, under God, it has to depend upon; if earnestly to contend for the safety, rights, and establishment of her majesty, together with those of the Church; if to vindicate her majesty's title to the crown against the usurpations, pretences and encroachments of her adversaries, and to assert her right to the throne to have been so clear, manifest, and undoubted, that even her worst enemies (could such a pious princess be supposed to have any) must acknowledge it: that she was proclaimed as it were by the voice of God, in the universal joy, satisfaction, and unanimity of her subjects; that her personal merit, exempted from that, made her worthy of a brighter diadem than she wears: if to persuade her subjects, with the most hearty zeal, and generosity, to enter into a necessary war for the defence of her majesty, and the common preservation of our Church, liberties, and constitution, against a powerful adversary; if to beseech God to prosper so good an undertaking, to give an happy event and issue to such a rightful cause, to crown our arms with victory, and to make them as successful as they are just and honourable; and that, in order to this, we are all bound both in duty to God and our sovereign, as well as by our own interest, unanimously, and heartily to assist and support her under this great undertaking, as far as our prayers and estates, lives and fortunes, can serve her; if to persuade her subjects, that the great and threatening dangers of her enemies, should have that just effect upon us, to unite us, as much as in our resolutions and affections, as they do in our common interests, apprehensions, and troubles; if to set out the blessing we enjoy in the wise constitution of our go

vernment and laws, in the most refined policies of our parliament and ministry, in the strength and number of our armies, fleets, and confederates, in the care and watchful vigilance, the courage, resolution and conduct of our general, and above all, in the piety and prudence of our most gracious queen; if to affirm that she daily gives fresh instances of her wisdom, in the happy administration of her government, and in nothing more shews her policy, and distinguished judgment, than in making choice of such ministers of state, who are acceptable to their country, and express such a zeal and steadiness in its service and true interests, and whom nothing could bribe, or betray into a party, wherein it might any ways seem to be endangered; if, with the most ardent requests, to implore God's providence, which through so many dangers and difficulties has raised up, and preserved her majesty, to carry on these glorious undertakings with success, that she may be able to restore and settle the peace of Europe, in its just rights and limitations; and that, as God has bestowed a crown upon her in this world, as the reward of these heroic and pious designs, so, after a long reign here, he would advance her to an higher throne in heaven, and dignify her with a glorious and immortal crown hereafter:" If this, my lords, I say, is falsly and maliciously to suggest, that her majesty's administration, both in ecclesiastical and civil affairs, tends to the destruction of the constitution; if this be charging her majesty, and those in authority under her, both in Church and State, with a general mal-administration; if this be, as an incendiary, to persuade her subjects to keep up distinctions of factions and parties; if this be instilling groundless jealousies, fomenting destructive divisions, and stirring up her majesty's subjects to arms and violence, against any but her enemies; then, my lords, I am guilty of this Article of Impeachment; otherwise I am innocent.

My lords, I have always thought it my duty, upon all public occasions, to assert these principles of loyalty and subjection to the supreme power, whenever I had a proper call so to do; of this there are numberless witnesses in those several places to which I have belonged. One of these I beg leave of your lordships particularly to mention, Magdalen College in Oxford, whereof I am at present an unworthy member; and which by the known sufferings of the whole body for the Church and Constitution, contributed as much towards the late happy Revolution as any society in the kingdom: to which honourable society I humbly appeal for my character and behaviour. I could also appeal for the same to a right reverend lord, that now sits on the bench of bishops.

Had it been fit to have troubled your lordships with evidences of my hearty affection to the present government, I could have produced them in great abundance, from the persons with whom I have conversed, from the gentlemen whom I have bred up, and from the congregations to which I have preached. If my principles had any tendency towards alienating the affections of her majesty's subjects, surely some one instance of my disloyalty to the queen, some favourable expressions towards the Pretender, some indications of my dislike to the present settlement, and the Protestant Succession, might have been pitched upon, and exposed to your lordships, in order to justify the charge of sedition against me. But I cannot but with pleasure observe to your lordships, that from the whole course of my actions, no one instance of that kind is alleged, or so much as pretended.

My lords, the charge of wickedly wresting divers texts of Scripture lies very heavy upon me as a Christian, and minister of Christ. If I am guilty of it, there is another tribunal, another bar at which I am to appear, and where by that Scripture, which I have wrested, I shall be judged and condemned. In the mean time, my lords, I hope that those, whose particular profession and studies qualify them to be the most competent judges of such matters, will absolve me in this particular.

Upon the whole, therefore, my lords, I hope it appears, that I am not guilty of any of the crimes of which I am accused; that I have transgressed no law of the land, neither statute nor common law, relating either to her majesty, or to my fellow-subjects, to the Church, or to the State: and that I may with all humility apply to my own case the words of that blessed Apostle, whose doctrine I defend, and whose example I hope I shall have the grace to follow, 'Neither against the law, nor against the 'temple, nor against Cæsar, have I offended any 'thing at all.'

What I have hitherto humbly offered to your lordships, relates to my words and actions; and as to the thoughts and intentions of my heart, which are known only to God, and my own conscience, and which are affirmed in my Impeachment to be wicked, seditious and malicious; I call the Searcher of Hearts to witness in the most solemn and religious manner, as I expect to be acquitted before God and his holy angels, at that dreadful tribunal, before which not only I, but all the world, even your lordships, who now sit in judgment upon me, must appear, to be acquitted or condemned, that I had no such wicked, seditious or malicious intentions; that there is nothing upon earth I more detest and abhor; that my designs were, in every respect, directly contrary. I had no intention to asperse the memory of his late majesty, to traduce, or condemn the late happy Revolution, or to arraign the Resolutions of both Houses of Parliament. So far was I from designing to undermine and subvert her majesty's government, and the Protestant Succession as by law established, that it was my sincere intention to exert my best endeavours for their security. So far was I from intending to persuade her majesty's subjects to keep up a distinction of parties and factions, from instilling groundless jealousies, fomenting destructive divisions among them, or exciting and stirring

them up to arms and violence, that my aim was to persuade them to lay aside all distinctions, to unite in one well-compacted body, to be obedient to their governors, and to support the present establishment. So far was I from designing to defame her majesty's administration, or to infuse any undutiful thoughts of her, that I not only pay her all honour and obedience, but am from the bottom of my soul zealously, and affectionately loyal to her; being entirely persuaded, that the Church is so far from being in danger from her, that she is as heartily affected to its establishment and prosperity, as I hope I have always shewed myself to be to her sacred person and government.

As to the Protestant Succession by law established, though the doctrine which I preached tends to the security of it, (as I heartily desire every thing by me spoken should tend) yet having no occasion in either of my Sermons to take notice of it, I do no where in those Sermons mention it, nor say any thing that can be interpreted to have any view towards it. Therefore, though I cannot with my best application apprehend how it comes to be said in the preamble to my Impeachment, that I had designed to undermine and subvert it, yet I shall gladly take this opportunity of declaring myself before your lordships upon that subject. It is my sincere and hearty prayer, that God would prolong the life of her most sacred majesty, whose exemplary goodness and piety give us the best hopes we have of averting that vengeance which is due to the wickedness of the age we live in; that he would bless her councils at home, and her arms abroad, and make her reign exceed that of her renowned predecessor queen Elizabeth, in length, as well as glory. But when the inheritrix of the blessed martyr's crown and piety, when she, the desire of our eyes, and the breath of our nostrils, shall, full of years and honour, be gathered to her fathers, and exchange her temporal for an immortal crown; (since we are deprived of that prince, her royal offspring, whose loss no true lover of his country, and of the royal family can reflect upon without a bleeding heart, and whom God in his anger took from us, because we were unworthy of so inestimable a blessing,) I earnestly beseech God, in defect of future issue from her majesty, to perpetuate the succession of the crown, as it is established, in the most illustrious House of Hanover, which I look upon as, next to his providence, the best guard we have against Popery and arbitrary power, the best security of our Church, and of the constitution of our government, which is the glory and happiness of our own nation, and the envy of all others. And I cannot yet apprehend, how the doctrine which I have taught, tends to weaken or undermine it; nor on the other side, how the doctrine of Resistance, which brought her majesty's royal grandfather to the block, (supposing it a true doctrine) comes to be mentioned, or thought of, much less to be industriously maintained as a necessary and indispensible duty, under the most mild and gracious administration of the best of queens. Nothing seems more strange than that Resistance should be so carefully taught under such a government, unless it be that Non-Resistance should overturn it.

So far was I therefore from having any of those wicked, malicious, or seditious designs, which are laid to my charge, that my intentions were, on the contrary, to instil the principles of loyalty and obedience into my fellow-subjects, and withal to put a stop to that torrent of lewdness, irreligion and atheism, of which I have given your lordships so many flagrant testimonies.

These outrageous insults upon God, and goodness, are so provoking, that they may excuse some heat, and severity of expression in a minister of Christ, who has a just sense of religion, a due concern for the discharge of his holy function, or for the honour of his Maker and Redeemer. And if any objection be made against me, for treating with an unbecoming bitterness such daring Rabshekahs, who defy the living God; I beg leave to reply in the words of a reverend father of our Church, "Let them consider what moderation and temper a man had need be of, that in this nation, and this age, shall speak against faction, rebellion," (I add Deism, Tritheism, and all sorts of Heresy, Blasphemy, and Atheism,) "without extraordinary severity;" nay, it is our duty in such cases, to express ourselves with warmth and sharpness, according to the example of our blessed Saviour; who, though meekness itself, could not but shew the utmost indignation at the profaning the House of God. This is not, my lords, to rail, but to rebuke; and those who ridicule, or censure us for it, either have not, I presume, or will not own they have, a right notion of the dignity of our office; will not consider, that we are the ambassadors of Christ, that we are commanded, in his name, to exhort, and rebuke with all authority; and that our authority is derived from those to whom it was said by our blessed Saviour, "He that despiseth you, despiseth me, and he that despiseth me, despiseth him that sent me:" whatever expressions, therefore, in my Sermons, may have slipt from me, which seem so far liable to exception, as to carry a sense I never intended (as he must be an happy speaker, indeed, whose words are altogether unexceptionable,) yet I humbly hope, the above-mentioned provocations will plead my excuse, or that, at the very worst, some hasty, or even violent expressions, shall not be deemed High Crimes and Misdemeanors. I desire it may be farther considered by your lordships, that I could have no temporal interests to serve by the doctrines I advanced; and therefore could have no design in view, but to discharge my duty to God, as a minister of Christ, and to my sovereign, as a faithful and loyal subject.

My lords, these things being humbly offered to the consideration of your lordships, I hope, that what I have already suffered, as a supposed

criminal, will be thought sufficient punishment for one, who has offended against no law yet in being. It must be thought no little grief and vexation to any ingenuous man to be brought to this bar, under the least suspicion of such crimes as are laid to my charge; but for a person of my function to have an accusation of this nature alleged against him, so heinously reflecting upon his holy character, is such a foul blot, as though his innocence should at last be cleared by your lordships, upon the most undeniable evidence, must leave a scar upon his good name; which is to all men dear, but much more so to those, whose whole capacity of doing good in the world, principally depends upon it.

My lords, as the matter of my charge was highly criminal, so the form and manner of it run in such general and uncertain terms, that it was impossible to know the grounds of my accusation; or how to defend myself, when I knew not where I should be attacked. So that after I had provided as particular an answer as such a general accusation would admit of, the Commons were pleased in their Replication to say, that there were several things in it foreign to the charge. To the great misfortune of falling under the displeasure of that honourable House, I might add, that of a long and close confinement, and of an expence no ways proportioned to my circumstances. These, my lords, are afflictions which can be conceived by nobody so well as by him, who has been so unhappy as to feel the weight of them. And among these I reckon it not the least of my sufferings, that I have been for so long a time debarred, from taking heed to that flock over which the Holy Ghost hath made me an overseer. For even since I have had my liberty, by the favour of your lordships admitting me to bail, I have purposely avoided doing any part of the duty of my function, or even appearing in public, lest it should occasion any tumult or disturbance; as my necessary attendance on your lordships, from time to time, has since been thought unhappily to have done, without any fault of mine, or the least degree of encouragement given by me, which I profess, in the presence of God, to abhor.

All these circumstances, my lords, being considered, together with the public manner, the length and solemnity of my Trial before so august a court of judicature, by which means I am made a gazing-stock, both by reproaches and afflictions, and a spectacle to the whole world; I have stood in this place day after day, to hear myself accused of the blackest crimes, and openly reviled; I have been represented as a Papist in disguise, as a rebel, as an enemy to her majesty's person and government, and a favourer of the Pretender, though I have abjured him, (but not forgot him, as a learned person was pleased to say) that is, as the worst of perjured villains: I have been called an insignificant tool of a party on the one hand, and a most dangerous incendiary on the other: nay, an angel, that is a devil, detached from the infernal regions: All these things, I say, being considered, (and your lordships I am sure, in tender compassion to me will consider them,) it is most certain, that, whatever be your lordships' determination concerning me, I cannot escape without being a very great sufferer, and I shall have been abundantly punished, though I should have the happiness to be by your lordships at last acquitted.

Yet I cannot reflect without comfort, (the greatest of comforts next to that of a good cause, and a good conscience) that I answer for myself this day before the most illustrious assembly in the world, the whole body of the nobility of Great Britain; whose princely extraction, and high quality, whose magnificent titles and splendid fortunes, whose hereditary candour and generosity, inherent in noble blood, inseparable from the birth and education of peers; in a word, whose solid judgment, and exact skill in the laws of this realm, so eminently qualify them for the final determination of justice; who are neither to be swayed by hopes, over-ruled by fears, nor misled by any false prejudice or passion: If it must be a man's misfortune to labour under such hard circumstances as mine, it is no small mitigation of them, that he pleads his cause before such judges, who, he knows, will decide it with the strictest impartiality, equity, and honour.

And, when I consider that I now stand, and am judged for some of the doctrines of that gospel which God delivered unto our fathers, and you, my lords the bishops, their successors, have received from Christ and his Apostles, as the sacred depositum of the Church, to be maintained inviolably in its primitive simplicity; when I consider, what is the cause for which I am this day called in question; that it is one of those eternal truths, which you are so solemnly commissioned to teach, and earnestly contend for; when I consider, that it is what our blessed Lord and his Apostles sealed with their precious blood, and so many primitive martyrs maintained even in the midst of flames, so many learned bishops, and confessors recommended to posterity in their immortal writings, as the distinguishing badge, and glory of our Reformation; nay, when I consider, that it is what you yourselves have already supported with incontestable reason, and authority; it is no small satisfaction to me to think, that as your lordships are my judges, so, I hope in God, you must be my advocates. What a guilt, as well as disgrace, would it justly devolve upon the clergy, to recede from any principle of our excellent Church, especially from what has been so long retained, and boasted of, as its peculiar character! By abandoning which we must relapse into some of the worst doctrines, even of Popery itself, and render ourselves the most contemptible, as well as inconsistent Church in the world! I think, I may therefore with confidence use the words of the great Apostle to his accusers: "Having obtained help from God, I continue unto this day, witnessing

both to small and great; saying none other things than those which the prophets and Moses (I may add, Christ and his Apostles), did say."

For, my lords, if I have committed any faults or errors in expression, yet as I insist upon my innocence with respect to all the High Crimes laid to my charge, so I must still insist upon all the doctrines which I have taught, as being agreeable to the word of God, and to the doctrine of our most excellent and truly apostolical Church, and which we of the clergy are obliged both by subscription and oath to acknowledge and defend. And how hard are our circumstances, if we must be punished in this world for doing that, which if we do not, we shall be more heavily punished in the next! What a condition are we in, if we are commanded to cry aloud and spare not, to exhort, rebuke, in season and out of season, on the one hand; and prosecuted, imprisoned, ruined on the other? If this be our case, who indeed is sufficient for these things? And truly, how may we of the ministry, above all men living, apply to ourselves those words of the Apostle, "If in this life only we have hope in Christ, we are of all men most miserable: But our comfort is, that our hope in Christ is not only in this life." Justly might we be reproached, and deserve some of those reflections, which in these licentious times are so plentifully poured upon us, were we not ready to practise the doctrines we preach of self-denial, taking up our cross, and patient submission to sufferings and afflictions? For my own part, it matters not what becomes of me, nor is my deliverance, or ruin, of any moment to the world; or, if it be, I am not only ready to be bound, but to die, could I by that do service to my queen, my Church, or my country; neither count I my life dear, so that I might finish my course with joy, and the ministry which I have received of the Lord Jesus. But may God so direct your lordships that through me a wound may not be given to the doctrines of the Scriptures, and of the Church, which Christ hath purchased with his own blood.

And so, with all humility and resignation, I submit myself to your lordships' judgment, be it what it will: one thing I am sure it can never take from me, the power of wishing and praying, and (whether in prosperity or adversity, whether I am acquitted or condemned) I shall always pray for the queen my sovereign, for your lordships my judges, and for the Commons my accusers; most earnestly beseeching Almighty God, "to deliver all orders, and degrees of men amongst us, from all false doctrine, heresy, and schism, from hardness of heart, from contempt of his word, and commandment; from envy, hatred, and malice, and all uncharitableness."

[Then the Lords adjourned to their House above.]

Ninth Day.

Thursday, March 9.

The Lords coming down into Westminster-hall, and being seated in the manner before-mentioned, proclamation was made by the serjeant at arms as follows:

Our sovereign lady the queen doth strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

Then another proclamation was made: Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy bail, else thou forfeitest thy recognisance.

The Doctor appearing at the bar accordingly, with his counsel, as before:

Lord Chancellor. Gentlemen, you that are managers for the House of Commons may proceed to your Reply.

Sir *Joseph Jekyll.* My lords, Dr. Sacheverell and his counsel having concluded what they had to offer to your lordships, I shall enter upon the province assigned to me, in further execution of the commands of the House of Commons, which is, to reply to the Defence made for the Doctor to the first Article of the Commons' Charge.

My lords, I shall take notice, first, of the concessions made by the Doctor's counsel; secondly, of the exposition they have put upon those passages of the Sermon, which have been relied on by the Commons to maintain this Article; and, thirdly, of the Acts of Parliament, the Homilies, the Books, the Sermons, the Pamphlets, and the Gazettes, which the Doctor's counsel have called for to be read to your lordships.

And if I shall satisfy your lordships, that the concessions made by the Doctor's counsel are a departure from the defence made for him in his Answer, that they are extorted by necessity, and are likely to be retracted when this turn is served; if I shall shew your lordships, that their exposition of the passages in the Sermon is contrary to the plain meaning of those passages; if I shall shew, that the Acts of Parliament, the Homilies, and the other prints that have been produced, are either immaterial, or condemn the doctrine laid down in the Sermon; and if I shall shew, that this criminal, for so I must call him, since the House of Commons have called him so; (whether he will be so in the event, I agree, rests only in your lordships' judgment;) if, I say, I shall shew he is guilty of a most heinous offence, I shall not doubt of your lordships' justice.

My lords, the concessions are these, that necessity creates an exception to the general rule of submission to the prince: that such exception is understood or implied in the laws that require such submission: and that the case of the Revolution was a case of necessity.

These are concessions so ample, and do so fully answer the drift of the Commons in this Article, and are to the utmost extent of their meaning in it, that I cannot forbear congratu-

lating them upon this success of their impeachment; that in full parliament this erroneous doctrine of unlimited Non-Resistance is given up and disclaimed. And may it not, in after-ages, be an addition to the glories of this bright reign, that so many of those who are honoured with being in her majesty's service, have been, at your lordships' bar, thus successfully contending for the national rights of her people, and proving they are not precarious or remediless.

But to return to these concessions; I must appeal to your lordships, whether they are not a total departure from the Doctor's Answer? whether there is one word in the Answer which looks that way?

In his Answer he takes notice, that the general assertion in his Sermon, of the utter illegality of Resistance, is a colourable pretence for the article; but does he add the restriction or limitation to it, which hath been now thought necessary, and hath been insisted upon as most material for his defence? No, my lords, but the quite contrary; for these are the words of his Answer, "The said Henry Sacheverell doth with all humility aver the illegality of Resistance, on any pretence whatsoever, to be the true doctrine of the Church of England." Now, could any thing have been more material for him in his Answer, than adding these restrictions to his general assertion in his Sermon, which his counsel now say he intended, though he did not express? Or if that was his intention, could he possibly have forgot it, when the frame of his Answer was under consideration?

But now he sees the resolution of the Commons, and the endeavours of those who have their commands to carry on this prosecution, to bring him to punishment; now he sees your lordships' daily attendance upon this Trial, and your attention to the Charge against him; now he sees, if he had abided by his Answer, he must have been condemned, or the Revolution; these are the motives which have prevailed upon him to tolerate his counsel to make these unwilling concessions, and have extorted them from him.

And how little these concessions ought to avail him, your lordships will see, when you consider how likely it is he will retract them when this turn is served. May we not then expect he will use this very argument of necessity, the coercion or restraint he is under by this prosecution, as an excuse for these concessions? And when your lordships are told, that it is the duty of divines (whose office it is to explain the Scripture to the people) to inculcate this doctrine of Non-Resistance in the most unconfined and unlimited terms they are able, and mentally reserve the exceptions to themselves; when authorities have been produced for asserting this doctrine in such a manner as to exclude any exception whatsoever, and the Doctor himself did not expressly come into these concessions, it is certain they ought not to be of any avail to him.

Your lordships will therefore give me leave to consider the exposition which hath been put on those passages, which the Commons relied on for proof of their first Article: and I shall show that exposition to be contrary to the plain meaning of those passages.

My lords, I readily agree, that no strained innuendoes, or supposed and forced constructions (which are the words used in the reason given for reversing the judgment in sir Samuel Barnardiston's Case) ought to be admitted, to explain the meaning of the Doctor, in order to prove him criminal. I think the principles laid down upon the reversal of that judgment are solid and just; and therefore nothing but express words, or a necessary implication collected from a man's words, can make him an offender. But I would not have it gone away with, that there must be express words of scandal, to make a man criminal; indirect or oblique scandal has in all times been met with and punished in the ordinary courts of justice; and if it were otherwise, that which aggravates the crime (the subtilty or contrivance of it) would prevent the punishment: and therefore it is, that ironical scandal, nay, even dumb scandal (scandal by pictures, or by signs) as is mentioned in the Case de Libellis Famosis, in my lord chief justice Coke's fifth Report, is punishable by law. The only caution necessary in these cases is, that the construction or interpretation be not strained or forced. And, my lords, in this case we have not only a seditious meaning plainly collected from the Doctor's words, but express criminal words, a false suggestion, that his late majesty, in his Declaration, disclaimed the least imputation of Resistance, introduced for a malicious and seditious purpose.

My lords, the first Article has been rightly divided into three parts. The Doctor is charged with suggesting and maintaining, first, "That the necessary means used to bring about the Revolution were odious and unjustifiable. Secondly, that his late majesty in his Declaration disclaimed the least imputation of Resistance: and, thirdly, that to impute Resistance to the Revolution, is to cast black and odious colours on his late majesty and the Revolution."

The two last branches, my lords, are particulars. The first is the general; and if the two last are proved, such proof makes out the first: but I shall consider the Answer given by the Doctor's counsel to the proof of the two last branches in their order, and proceed to consider the Answer that has been given to the proper proofs of the first.

My lords, the first proof of this branch, was the general assertion of the utter illegality of Resistance upon any pretence whatsoever. It hath been said in answer to this, that this is spoken of the supreme power, which is the legislative power, and then there ought to be no exception whatsoever.

But, my lords, that the Doctor did not mean the supreme legislative power, but the supreme executive power, is evident;

First, from the account he presently gives of those that oppose his principle of Non-Resistance, which runs all along upon the person of the prince only, as cancelling their allegiance, calling their sovereign to an account, dethroning and murdering him.

Secondly and principally, from his bringing in the case of the Revolution, as urged by those who are adversaries to his principle of Non-Resistance. Now the Revolution is not, cannot be urged as an instance of the lawfulness of any thing, but of resisting the supreme executive power acting in opposition to the laws; and this the Doctor himself admitted, when he told your lordships that the supreme power was not then resisted. This is therefore the supreme power he affirms it is utterly unlawful to resist.

But it was said by one of the Doctor's counsel, that the Non-Resistance the Doctor preaches up, is the utter illegality of resisting the supreme power in all things lawful, for these words, 'in all things lawful,' make part of that sentence. My lords, I admit they do; but these words are relative to his assertion concerning active obedience, and not passive, as will appear by reading the whole sentence. "The grand security of our government, and the very pillar upon which it stands, is founded upon the steady belief of the subjects' obligation to an absolute and unconditional obedience to the supreme power in all things lawful, and the utter illegality of Resistance on any pretence whatsoever." The one dividing member of the sentence is, the obligation to obedience in all things lawful; the other, the illegality of Resistance on any pretence whatsoever; the one is restrained, the other unlimited. It must be taken therefore (notwithstanding these objections) that the Doctor asserts the utter illegality of Resistance to the supreme executive power, though acting not in conformity, but in contradiction to the laws.

My lords, I go on to the second proof of the first branch of this Article, which is, the Doctor's insinuation that the parliament disowned the Resistance at the Revolution, by declaring, that they set the crown on the king's head on no other title than of the vacancy of the throne. One of the counsel thought fit to stand to this fact, because the vacancy of the throne is mentioned in the Bill of Rights; and he says, there is no other fact there stated. I beseech your lordships, does not the same Act take notice of the mal-administration of king James, and his abdicating the government, as the means by which the throne became void? And I may appeal to your lordships' Journal, and the Journals of the House of Commons, whether the word 'abdicated' was not used rather than the word 'deserted' (after a conference between the two Houses) for this reason, insisted on by the Commons, that that word 'abdicate' included in it mal-administration, which the word 'desert' did not.

The same counsel said, the Act for preventing Vexatious Suits, urged by the Commons, as a parliamentary declaration, justifying the Resistance at the Revolution, was only for indemnifying those that acted at that time, and was no more than was done in the reign of Edward the third, after Edward the second was dethroned. This surely is no manner of answer to the declaratory part of that law, which takes notice of the king's undertaking a glorious enterprize, for delivering the kingdom from Popery and arbitrary power; and that divers subjects, in aid and pursuance of that enterprize, did several acts of violence and resistance; and this law declares such acts were necessary, and ought to be justified. And I cannot but observe this by the way, that the parliament and the Doctor are of different opinions; the parliament thought that Resistance ought to be justified; the Doctor thinks not; and if so, then Dr. Sacheverell doth suggest and maintain, that the necessary means used to bring about the Revolution were odious and unjustifiable.

I come now, my lords, to the second branch of the first Article, the Doctor's assertion, that his late majesty in his Declaration disclaimed the least imputation of Resistance; and the Doctor's Answer to it.

My lords, his counsel admit this assertion is in the Sermon, and that this assertion is not true; but they say it was a mistake only in the Doctor; that the Doctor has expressed himself somewhat obscurely, and now he has explained himself; that explanation ought to be received. The Doctor meant, they say, conquest; and so he had explained himself not only in the marginal note, but in the Sermon itself. My lords, if this were so, I admit it would be a good defence; but that this was not a mistake, or rather was a wilful one in the Doctor, and that he thereby designed to traduce the memory of his late majesty and the Revolution, I shall shew from what his own counsel insist on.

They say the Doctor must mean conquest, because the prince of Orange, who was no subject, but a sovereign prince, could not be said to resist according to the common understanding of that word. Now, my lords, it is true the prince of Orange could not be said to resist, and so could not disclaim Resistance for himself; but could he not be joined and assisted by the subjects of the realm, who might be said to resist, and were invited by him so to do? Doth not this appear by the whole tenor of his Declaration, and even by the passages quoted by the Doctor? And since his late majesty could not be said to resist, but the subjects, who, upon his invitation, joined with him, could; and the Resistance of subjects is what the Doctor is speaking against; it is plain that the Doctor speaks of the king's disclaiming the Resistance of those who joined with him, and not his own Resistance: and therefore I cannot see that the quotation of the passage out of the Prince's Declaration,

at the bottom of that page, doth make out that he meant conquest, by Resistance in his Sermon; or if it did, would it excuse the Doctor's preaching this part of his Sermon, which was done without referring to that passage?

But it is said, he has explained that he meant conquest by Resistance in the body of the Sermon, because he says, the parliament burnt a libel that would have pleaded the title of conquest, by which Resistance was supposed. But that this passage doth not make out that he meant conquest by Resistance, is evident, from his making Resistance not to be conquest, but only an ingredient in it. And by representing Resistance and conquest to be the same thing with the Doctor, he is made to say, that the parliament burnt a libel that would have pleaded the title of conquest, by which conquest is supposed.

It is plain, therefore, that Dr. Sacheverell hath asserted, that his late majesty in his Declaration disclaimed the least imputation of Resistance; and disclaimed it at a time, if you will believe the Doctor, when he was exhorting the subjects of king James to resist, and was joining with them, and encouraging them in it; than which it is impossible there can be a greater reflection on his late majesty, or the glorious cause he then had in hand.

My lords, I come now to consider the proof of the third branch of the first Article, and the Answer that has been given to it. The third branch is this, that to impute Resistance to the Revolution, is to cast black and odious colours upon his late majesty and the Revolution: the proof is, that part of the Sermon wherein the Doctor asserts, that the adversaries to the doctrine of Non-Resistance, who urge the Revolution in their defence, are the greatest enemies to that and his late majesty, and the most ungrateful for the deliverance, in endeavouring to cast such black and odious colours upon both: how often must they be told, &c. The answer to this is, that the persons the Doctor describes, as casting black and odious colours on his late majesty and the Revolution, are not those who impute Resistance to the Revolution, of whom he affirms nothing, but those new preachers and new politicians, who teach antimonarchical and wicked doctrines, and who urge the Revolution in defence of them.

My lords, if the Doctor had meant these persons, he would have shewn them, which he certainly might have done, that what was acted at the Revolution, did not in the least justify their opinions; but he declining this, and placing the defence of the Revolution on a false fact, known to be so to himself and to the whole nation; and this, taken together with his introducing these men as defending their principles by the Revolution, leaves the load of these detestable opinions on the Revolution, and not only condemns the Resistance at the Revolution, but brands it.

But it is said, my lords, that the clause, "our adversaries think they effectually stop our mouths," &c. relates to the defence of these antimonarchical principles, and not to the general proposition of the utter illegality of Resistance upon any pretence whatsoever; and if so, I agree there is no foundation for this branch of the Article; and whether he is guilty of this branch or not, turns entirely on this question.

My lords, I little thought such a construction would have been endeavoured, by a wrong recital of this clause in the Sermon, by the Doctor in his Answer; for there it is said, as from the words of the Sermon, that they, that is, says the Doctor, these new preachers and new politicians, urge the Revolution in defence of such principles; when your lordships see the words of the Sermon are, "our adversaries think they effectually stop our mouths, and have us sure and unanswerable on this point, when they urge the Revolution of this day in their defence." This therefore brings the case of the Revolution urged by these adversaries, to the point or proposition he had before laid down, which was the utter illegality of Resistance on any pretence whatsoever; and not to the defence of divers antimonarchical principles, taught by the new preachers and new politicians? And this is still plainer, if your lordships consider that the Doctor's reply to these adversaries, by denying there was any Resistance at the Revolution, can only relate to the point of Non-Resistance he had before asserted; and which Resistance, if it were not denied, must stand condemned by the Doctor's proposition.

As little, my lords, did I expect to hear from one of the Doctor's counsel, that there are twenty or thirty lines between the general proposition and this clause; since if there be a connexion between this clause and that proposition (which I have already shewn there is), it is not the intervention of so many lines will hinder it; and if there had been no connection, their being close together would not have made one. And by this manifest connection, the Doctor hath brought this general position, of the unlawfulness of all Resistance, to bear upon the Revolution. Which I hope may serve for an answer to the same gentleman, who says, it is one thing to lay down the general rule without making the exception, and another thing not to make the particular exception out of that rule; for the Doctor has mentioned the Revolution, but not in order to except it but to include it.

Indeed, my lords, the learned Doctor who is of his counsel, pretends to have found out the exception in the Sermon, page the 10th, because he finds the word 'necessity' there: the words are these, "Only this maxim in general I presume may be established for the safety, tranquillity and support of all governments; that no innovation whatsoever should be allowed in the fundamental constitution of any state, without a very pressing, nay unavoidable necessity of it." But if the Doctor had but read to the end of the sentence, he would have found,

Doctor Sacheverell condemns all that bore a part in the Revolution, before a law was made about it: the words that follow are these, "And whosoever singly, or in a private capacity should attempt it, is guilty of the highest misdemeanor, and is an enemy to that politic body of which he is a member." And if that sentence respects the Revolution, then Doctor Sacheverell condemns all from the highest to the lowest, who in their private capacity, joined with the prince of Orange, or assisted in bringing about the Revolution. This is the thing he is now charged with; not condemning the Revolution as a thing settled by law, but the necessary means used to bring it about. But if the Doctor instructed his counsel to insinuate, that there was any innovation in the constitution wrought by the Revolution, it is an addition to his crime. The Revolution did not introduce any innovation; it was a restoration of the ancient fundamental constitution of the kingdom, and giving it its proper force and energy.

Indeed, all the other counsel differed from that learned civilian, and maintained, that Doctor Sacheverell did not, nay, ought not, to make any exception: and one of them said, If clergymen, instead of preaching up the general rule of obedience, were permitted to state the several excepted cases, such exceptions would in time devour all allegiance. My lords, if the Doctor had pretended to have stated the particular bounds and limits of Non-Resistance, and told the people in what cases they might, or might not resist, he would have been much to blame; nor was one word said in the Articles, or by the managers, as if that was expected from him: but on the contrary, we have insisted, that in no case can Resistance be lawful, but in case of extreme necessity, and where the constitution cannot otherwise be preserved, and such necessity ought to be plain and obvious to the sense and judgment of the whole nation; and this was the case at the Revolution. And is there no difference between a divine's mooting and putting cases of lawful Resistance, and excepting the Resistance at the Revolution out of the general rule of the illegality of Resistance, on a day when he was obliged not only to commemorate the Revolution, but the Resistance, the necessary means used to bring it about, as appears by the service appointed for that day?

And, my lords, is a House of Commons, who are vindicating that Revolution only, to be represented as if we were calling upon divines to state the cases wherein Resistance is lawful, and wherein not? A task unfit for any one, and more especially for them to meddle with: and are we, by such suggestions as these, to be defamed and insulted, and represented as promoting anarchy and confusion?

My lords, there can be no order or regularity, if the constitution, the beautiful frame of a legal monarchy, which this nation hath so long enjoyed and prospered withal, be destroyed or given up. What inclination has the present age shewn to submit to arbitrary power? or rather, what hath been wanting in it to shew the contrary?

But I go on, my lords, to consider an argument made use of by another of the Doctor's counsel, that it was needless for him to except the case of the Revolution, for that was known to every body, and had often been approved by the legislature. I beseech your lordships, could the Doctor know this, and not only not except that case, on a day appointed to give solemn thanks for it, but introduce it for no purpose but to leave it under the condemnation of the general rule of Non-Resistance? And by this method the Doctor has brought his general rule to bear upon the particular case of the Revolution. For he takes but one way of acquitting the Revolution, which is by laying down that for truth, which every man knows to be false; and they that assert this truth he says, "cast black and odious colours on the late king and the Revolution:" which makes out, that Dr. Sacheverell doth suggest and maintain, that to impute Resistance to the Revolution, is to cast black and odious colours on his late majesty and the Revolution.

I am sensible how tedious I must have been in this nice tracing the answers given by the Doctor's counsel to our proofs of this first Article; but because the judgment of the case will depend very much upon it, I am sure I shall have your lordships' pardon.

And now, my lords, what a representation is here of that glorious transaction, the late happy Revolution! The part the subject had in it, is represented as contradicting the express command of God in Scripture, and destructive of all governments: His late majesty is represented as encouraging this pernicious wickedness, and disowning it at the same time: Give me leave, therefore, on behalf of the nation, and the memory of his late majesty its deliverer, to state this affair shortly, and in another light to your lordships.

The subjects resisted, the late king joined his army with the arms of Resistance; and if the nation at that time had not had recourse to that remedy, how abject and how miserable must they have been! If we look into the histories of other countries, have not the best and happiest nations been most tenacious of their liberties? And while they have continued so, and withstood absolute power, they have been prosperous at home, and considerable abroad: But when they have fallen from this zeal and industry, which is the foundation of their prosperity at home, and magnanimity, which makes them considerable abroad, have deserted them, they have sunk into sloth and effeminacy. Can any one therefore, with any colour say, that Resistance in cases of extreme necessity, has worse consequences than unlimited subjection?

Let us now turn our eyes a little on the part our late king had in the Revolution. Did he not undertake a most hazardous enterprise, to procure us happiness at home, and to give us that weight abroad, which this nation had

long enjoyed, but at that time was deprived of? And with what care and anxiety, even to the last moment of his life, did he labour to secure these blessings to us?

Let us look beyond his time, and since, for the sense of the nation upon this point. What satisfaction did the nation take, in the assistance his renowned predecessor (queen Elizabeth) gave to the oppressed provinces, our then good neighbours, and our now potent allies? How zealously did the nation promote the assistance king James the first gave to the injured prince palatine, against the emperor his superior lord? And what resolution and tender concern for the persecuted Rochellers did king Charles the first shew and express? And has not her majesty assisted the Spaniards against a prince acknowledged by them, and seated on the throne? Nor did her goodness, which is as extensive as her power, overlook the poor estate of the people in the Cevennes, or neglect to give them all possible assistance, against their king exercising a cruel dominion over them. These, and many more instances which might be fetched from other countries, are so many authorities against this doctrine of unlimited Non-Resistance.

And now, my lords, I come to consider the authority the Doctor pretends to have for it: his counsel say, they have acts of parliament for this doctrine; I shall not mention the particular acts, because they are well known, but consider them under three heads. First, those acts that were before the Restoration. Secondly, those after the Restoration, and before the Revolution. Thirdly, those after the Revolution.

My lords, as to those before the Restoration, I readily admit they condemn Resistance generally; they do not mention any exception. The counsel of the other side have furnished me with an answer to them: They say, these, and all other laws, have an exception implied in them. The wisdom of the law, in not expressing the exception, is plain: It is neither decent, nor probably would have a good effect, to put odious cases, such as a prince's overturning the constitution. The Roman law did not provide against parricide, nor doth the English law neither; since it hath no distinct punishment for that kind of murder, though it hath some for others, which are called petty-treasons. Laws are framed upon a view of ordinary and common cases: 'Ad ea quæ frequentius accidunt jura adaptantur,' is a known maxim, and of great use in the exposition of laws. And if our legislators had been asked the question, Whether they meant by those laws to make all other laws, and even those laws themselves of no validity? (which, if absolute power cannot be withstood, would be the certain consequence;) would not they have answered, nothing was farther from their thoughts. And if it be 'Maledicta expositio 'quæ corrumpit textum,' applied to any particular law; what a cursed exposition must that be, which corrupts, or rather annuls the text of all the laws at once?

My lords, the next head of acts, are those after the Restoration, and before the Revolution. I do admit those laws go farther than the former, and seem to condemn all Resistance, and in such terms, as to exclude any exception whatsoever. My lords, what I have said relating to the former laws, may be applied to these. But further, I desire it may be considered, these legislators were guarding against the consequences of those pernicious and antimonarchical principles, which had been broached a little before in this nation; and those large declarations in favour of Non-Resistance, were made to encounter or obviate the mischief of those principles; as appears by the preamble to the fullest of those acts, which is the Militia Act in the 13th and 14th of king Charles the second. The words of that act are these: "And during the late usurped governments, many evil and rebellious principles have been instilled into the minds of the people of this kingdom, which may break forth, unless prevented, to the disturbance of the peace and quiet thereof: Be it therefore enacted," &c. Here your lordships may see the reason that inclined those legislators to express themselves in such a manner against Resistance: They had seen the regal rights swallowed up, under the pretence of popular ones; and it is no imputation on them, that they did not then foresee a quite different case, as was that of the Revolution; where under the pretence of regal authority, a total subversion of the rights of the subject was advanced, and in a manner effected. And this may serve to shew, that it was not the design of those legislators to condemn Resistance, in a case of absolute necessity for preserving the constitution, when they were guarding against principles which had so lately destroyed it.

But now, my lords, let us see how the laws run after the Revolution. Your lordships will find, that the Resistance at the Revolution is not only approved of in express terms, by the Act for preventing vexatious Suits; and indeed, every Act passed since the Revolution is an implicit approbation of it; but the declaration of the unlawfulness of taking arms against the king on any pretence whatsoever, (required to be taken by the Corruption Act, the Militia Act, and the Act of Uniformity,) is now repealed. There was another Act mentioned by one of the Doctor's counsel, the Act for regulating Select Vestries: that Act expired in king Charles the second's time, and was never continued. The first gentleman that spoke for the Doctor, said, in answer to the repeal of this declaration, by aclause in the Act of the first of king William and queen Mary, for abrogating the old Oaths, and appointing new ones; that it is a very tender repeal, if it be one. I did not, my lords, well understand his meaning; but I am sure, that is a very tender answer, if it be any at all. My lords, if it be thought that this declaration, as it is enjoined by the Corporation Act, is not repealed, because the Corporation Act is not particularly mentioned in the clause

of the Act of the first of king William and queen Mary, which repeals the declaration; I answer, after the Militia Act, and the Act of Uniformity are mentioned, there follow general words; "any law or statute to the contrary notwithstanding:" and this repeals the declaration as to that Act, as well as to the other two Acts. And this opinion has prevailed universally; and if it were otherwise, there is scarce a corporation in England, but would be dissolved by the incapacity of their members.

But the same counsel argued, That the doctrine mentioned in that declaration must be the true doctrine, or the declaration would not have been enjoined and taken so long as it was; and the repeal does not make the proposition false: and we might as well argue the Solemn League and Covenant to be a lawful oath. My lords, as to the declaration against the Covenant, that was considered as a temporary thing only, and, by the Act of Uniformity, was to cease upon the 25th of March, 1682, and therefore not at all to be compared with the other declaration, which was intended to be perpetual. As to the truth of the doctrine in this declaration which was repealed, I will admit it to be as true as the Doctor's counsel assert it; that is, with an exception of cases of necessity; and it was not repealed because it was false, understanding it with that restriction; but it was repealed, because it might be interpreted in an unconfined sense, and exclusive of that restriction; and being so understood, would reflect on the justice of the Revolution: and this the legislature had at heart, and were very jealous of; and by this repeal of that declaration, gave a parliamentary, or legislative admonition, against asserting this doctrine of Non-Resistance in an unlimited sense.

My lords, I must confess, I did not expect to hear the Association and the Abjuration Oath brought in as asserting this doctrine; if they do, this may serve to account for their taking them who believe that doctrine, which otherwise, perhaps, they would be at a loss to find an honest reason for. But, my lords, doth engaging to stand by, and assist one another against all the king's enemies, or swearing to defend the king or queen against all traitorous conspiracies, signify any more than what is implied in the old Oath of Allegiance? There is, my lords, indeed something more in the Association and Abjuration Oath; for the person taking them in his late majesty's time, declared, That he believed in his conscience king William was rightful and lawful king of this realm. This certainly put the conscientious taker of them upon a consideration of the foundation on which that right and title was built. And since there was no foundation for it but the Revolution, and that Revolution was founded on Resistance; how those could bring themselves up to take that Association, or that Abjuration Oath, who believed that Resistance unlawful, I am at a loss to know.

My lords, upon this head of these several acts of parliament that have been mentioned, I beg leave to observe, that as it is not to be supposed it was the original intention of any laws to enervate the force of all the laws, so your lordships see, there are since the Revolution laws that do exclude any such supposition, and do affirm that indefeasible inheritance which the people have in the laws.

My lords, the next part of the evidence offered by the Doctor, was the homilies; which are said to be confirmed by act of parliament, because the Articles of the Church of England are so; and the 35th Article approves the homilies, as containing godly and wholesome doctrine; and the clergy are obliged to read and subscribe those Articles.

My lords, I believe it will be admitted, that no more is intended by that subscription, but that the doctrine contained in the homilies is right in the main, and not that every sentence in them is so: for in this last sense, I believe, never any divine subscribed the Articles; and it will be hard to name any preacher, or writer of note, who has not contradicted some passage or other in them: nay, as to one, the general and approved practice of the Church is against it; I mean that passage, which condemns the use of organs in churches.

And surely, my lords, the sense of the homilies cannot be found out, by reading select passages out of them, (as was done in the Doctor's defence) but by observing the frame and tendency of the whole: and I may appeal to your lordships, and especially to my lords the bishops, whether those who compiled the homilies against rebellion, seemed to have had at all under their consideration the case of a total subversion of the constitution. It is plain, the main design of those homilies was against the risings of the Popish faction, and the plausible and popular pretences made use of by them for supporting their rebellions. Did not that great queen, in whose time the latter book of homilies was compiled, explain her own opinion on this point, by the assistance she gave to the Hollanders against the Spanish king, their sovereign? Did not the parliament explain themselves, by the supplies given to the queen for that purpose? And did not the clergy explain themselves likewise, by the supplies granted in convocation, in favour of that assistance? Can it therefore be imagined, the homilies intended to condemn that Resistance, which the queen and the whole nation, nay, even the clergy themselves, assembled in convocation, approved of? And I dare say, if Dr. Sacheverell had read any of the homilies against rebellion, which he says he is commanded to do, if there be no Sermon on the 5th of November; I say, if he had read any one of them to his congregation at St. Paul's, not one of his auditors would have thought the Revolution condemned by the homily, whatever they might have thought of the Doctor.

My lords, that which we accuse him for, is, That he lays down this general doctrine of Non-Resistance, in terms exclusive of any exception; and, not content with that, points out

the Revolution, for men to compare it with, and condemn it by. How much better would it have become the Doctor, to have imitated that zeal which appears in the compilers of those homilies, for a Protestant queen against a Popish faction, than to arraign the Revolution, upon the defaming of which, the hopes of a Popish faction against a Protestant queen, are built?

My lords, let us now consider the other books, or writings, the Doctor has produced to justify his doctrine: these are chiefly, if not all of them, the labours of divines; and I will place them in these two classes, those before the Revolution, and those since. And, my lords, I will say, if this question of submission were left by the divines, to those who make the municipal laws of their country, or the nature of laws in general, their study; and they would confine themselves to the pressing a legal submission only, founded (as it is by the law of England) on common consent, and common good, it would be much more for the honour of religion, and the peace and felicity both of the sovereign and the subject.

And this will be very manifest, if your lordships call to mind but two of the Doctor's quotations before the Revolution, which were read to your lordships: the one is a passage out of bishop Sanderson, the other the Oxford Decree in 1683.

My lords, bishop Sanderson (and he only of all that have been quoted) has put the case of Resistance for the preservation of Church and State, which are but other words for the constitution; and has delivered this doctrine of Non-Resistance in such unlimited and bold terms, as I shall not repeat, to create a second displeasure in this great assembly. And I willingly admit, he was a very learned, judicious, and pious prelate: and if so great and good a man fell into such indiscreet, indecent and shocking expressions on that subject, as did visibly affect such an assembly as this, one would think it should discourage others from delivering that doctrine in such a latitude.

The next is the Oxford Decree, which condemns all Resistance whatsoever: But, my lords, it is observable, that in the same Decree, there is a condemnation of this proposition that I am going to read to your lordships; That it is lawful to preclude the next heir from his right and succession to the crown: and yet at the same time, the condemning this proposition, that is, the holding, affirming, or maintaining the contrary proposition, was (by the 13th Eliz. cap. 1,) made high treason in her time, and a forfeiture of goods and chattels ever after. And how the law now stands as to that particular, by the Act for securing her Majesty's Person and Government, and the Succession of the Crown of Great Britain in the Protestant Line, every one knows. And, my lords, when we find so great and learned a body criminally erring in a point so fundamental, and upon which our prospect of happiness to future ages doth, under God, depend; ought it not to discourage particular divines, from pretending to determine points of law and policy? For my own part, I should hope, that that university's having fallen in at first so heartily with the Revolution, is as sincere a condemnation of the doctrine of unlimited Non-Resistance, as their solemn taking the Abjuration Oath is a public profession, that a parliamentary exclusion is lawful.

As for all the passages which have been read to your lordships out of the books or sermons of divines before the Revolution, in favour of Non-Resistance, your lordships may observe the reasons reach only so far, as when the mischief is not universal; or if it be universal, where it is tolerable, and not so mischievous as a civil war. I shall not mention any passages in them, (which have not been read) to limit the generality of the expressions concerning Non-Resistance; because I avoid bringing in any thing, which hath not been given in evidence. But how candid the Doctor's collections have been, your lordships may judge by that quotation out of my lord bishop of Salisbury's book, where there is an express exception of the case of subverting fundamentals: but your lordships may see the same candour shining out in several passages of the Doctor's Sermon, with respect to that reverend prelate, whose services, my lords, (before, and at the time of the Revolution) will never be forgotten by one part of the nation, nor forgiven by another.

My lords, I now come to the sermons and writings since the Revolution: And I may appeal to your lordships, whether they do not most plainly condemn the Doctor; those, I mean, where we had the fortune to be ready to call for other passages to be read out of the same book. Does not my lord bishop of Lincoln expressly mention the case of the Revolution, and justify the Resistance then used? How carefully does his grace the archbishop of York limit this doctrine of Passive Obedience, which the Doctor says ought to be delivered in the most unconfined terms? And it is by his grace's notion of this doctrine, that the Commons desire this cause may be judged and determined. I beg leave to read again to your lordships his remarkable words: "Care must be taken, that this general doctrine be not misapplied in particular countries. Though Non-Resistance or Passive Obedience be a duty to all subjects, and under all governments, yet it is not expressed the same way in all places; but both the objects and the instances of it do vary in different nations, according to the different models of their government. To speak this as plainly as I can: As the laws of the land are the measures of our active obedience, so are also the same laws the measure of submission. And as we are not bound to obey, but where the laws and constitution require our obedience; so neither are we bound to submit, but as the laws and constitution do require our submission."

This, my lords, is the doctrine the Commons

are maintaining, and are calling this criminal to an account for contradicting. If our obedience and submission is not to be extended to the prejudice of the constitution, the Resistance at the Revolution for preserving the constitution, stands justified, and the Doctor's unlimited doctrine of Non-Resistance stands condemned.

How prudently does his grace, my lords, caution the Doctor, and the rest of the clergy, in another part of his Sermon, by these words? "If indeed, a preacher should in the pulpit presume to give his judgment about the management of public affairs, or to lay down doctrines (as from Christ) about the forms and models of kingdoms or common-wealths; or to adjust the limits of the prerogative of the prince, or of the liberties of the subject in our present government: I say, if a divine should meddle with such matters in his Sermon, I do not know how he can be excused from the just censure of meddling with things that nothing concern him. This is indeed a practising in state matters, and is usurping an office that belongs to another profession, and to men of another character. And I should account it every whit as undecent in a clergyman to take upon him to deal in these points, as it would be for him to determine titles of lands in the pulpit, which are in dispute in Westminster-hall." And how well the Doctor has observed this necessary caution laid down by his grace, I leave your lordships to consider.

My lords, I have purposely omitted taking notice of any writings, except such as were produced by the Doctor, and I am satisfied how superficially I have considered them: But, in general, I may appeal to your lordships, whether in the lowest ebb of liberty, there have been wanting those in this as well as other countries, who have denied this slavish doctrine of unlimited Non-Resistance? whether, since the Revolution this nation has been so ungrateful to their deliverer, or unthankful for their deliverance, as to want those who have maintained the principles of the Revolution, and have shewed them to be as agreeable to the Christian religion, as they are to the nature of that excellent government we live under, which is that of limited monarchy?

And yet, notwithstanding the unanswered performances of divers, both of the clergy and laity, upon this subject, the Doctor has the boldness to affirm his doctrine to be the doctrine of our blessed Saviour and his Apostles.

My lords, I cannot mention this, without the deepest concern for the honour of the Christian religion. I beseech your lordships, what is liberty but justice, and what is justice, but doing to every one as we would be done by? And nothing, I think, is likelier to promote the practice of this Christian precept, than spreading a true sense and love of liberty, that principle which casts out of us a narrow regard to ourselves, and introduces a diffusive benevolence to others.

And against this principle it is, that the Doctor has offended.

My lords, I have endeavoured to shew, that the Charge in the first Article stands proved against the Doctor, and that this proof remains unanswered; and if so, his being a minister of the Gospel, his having taken the oaths to the late king, and to her present majesty, his being a fellow of that college which was in a particular manner delivered by the Revolution, are all of them aggravations of his offence, (if it can be aggravated;) and which, if proved, his own counsel admits, brings a foul imputation on her majesty and her government, makes her government an usurpation, and her subjects rebels; and that no punishment can be too great for him.

My lords, I never saw that criminal for whom I had not a hearty compassion, but there is both compassion and justice due to the injured innocent. Your lordships have before you on the one hand, the care and concern of Doctor Sacheverell; on the other, the honour and prosperity of a wise and brave nation, who as they have thought nothing too much to give or hazard to defend their liberties against a foreign enemy; so they hope your lordships' justice on this offender, will secure those liberties against domestic ones.

Sol. Gen. My lords, I am commanded by the Commons to join with the learned gentleman who spoke last, in replying to the defence that has been made upon the first Article of this Impeachment, which the Commons insist upon to be well-grounded, and fully proved, notwithstanding the several objections and excuses that have been offered by Dr. Sacheverell and his counsel.

One of the Doctor's counsel has agreed, That if he has asserted, that the Resistance used to bring about the Revolution was unlawful, no punishment can be too great for him: but what they have offered to your lordships in his defence is, that no such position can be made out without the help of innuendoes and forced constructions, which infer a meaning contrary to the natural sense and import of his words; and this way of charging a man with a crime, they truly say, is not agreeable to the rules of law, and would contradict one of the reasons given for the judgment of the House of Lords, in the Case of sir Samuel Barnardiston: and if this was the case, it would not become the Commons of Great Britain, who have such an affectionate regard to the laws and liberties of their country, to proceed upon an impeachment so ill-grounded. But when the Commons had so fully and particularly proved the assertions charged upon the Doctor by this Article, they little expected to have heard that his words had been wrested to wrong meanings, and made to speak what he never thought: and therefore, since the question depends altogether upon construction, and your lordships have been told that the passage upon which this charge is grounded, has not been fully stated, the Commons must give you the trouble of reading the passage at large, as-

stands in the Sermon; that your lordships may judge, whether they have not taken his words in the common and ordinary sense, and given them the only meaning they can bear.

The passage is in these words: "The grand security of the government, and the very pillar upon which it stands, is founded upon the steady belief of the subject's obligation to an absolute and unconditional Obedience to the supreme power in all things lawful, and the utter illegality of Resistance upon any pretence whatsoever. But this fundamental doctrine, notwithstanding its divine sanction in the express command of God in Scripture, and without which, it is impossible any government of any kind or denomination in the world, should subsist with safety, and which has been so long the honourable and distinguishing characteristic of our Church, is now, it seems, quite exploded and ridiculed out of countenance, as an unfashionable, superannuated, nay (which is more wonderful) as a dangerous tenet, utterly inconsistent with the right, liberty, and property of the people; who, as our new preachers, and new politicians teach us, (I suppose by a new and unheard-of gospel, as well as laws), have, in contradiction to both, the power invested in them, the fountain and original of it, to cancel their allegiance at pleasure, and call their sovereign to account for high treason against his supreme subjects, forsooth! Nay, to dethrone and murder him for a criminal, as they did the royal martyr, by a justiciary sentence: and, what is almost incredible, presume to make their court to their prince, by maintaining such antimonarchical schemes. But, God be thanked! neither the constitution of our Church or State is so far altered, but that by the laws of both, (still in force, and which I hope for ever will be) these damnable positions, let them come from the pulpit or the press, either from Rome or Geneva, are condemned for rebellion and high-treason. Our adversaries think they effectually stop our mouths, and have as sure and unanswerable on this point, when they urge the Revolution of this day in their defence. But certainly they are the greatest enemies of that, and his late majesty, and the most ungrateful for the deliverance, who endeavour to cast such black and odious colours upon both. How often must they be told, that the king himself disclaimed the least imputation of Resistance in his Declaration; and that the parliament declared, that they set the crown upon his head, upon no other title, but that of the vacancy of the throne? And did they not unanimously condemn to the flames (as it justly deserved) that infamous libel that would have pleaded the title of conquest, by which Resistance was supposed?"

And the question now before your lordships is, Whether by these words he has asserted, "That his late majesty in his Declaration disclaimed the least imputation of Resistance; and that to impute Resistance to the Revolution, is to cast black and odious colours upon his late majesty and the Revolution?" which are the assertions charged upon him in this Article, as "suggesting and maintaining, that the necessary means used to bring about the late happy Revolution were odious and unjustifiable." Now that there was Resistance in the Revolution, and that such Resistance, in a case of that absolute and unavoidable necessity, is consistent with the doctrine of the Church, and the fundamental law of the kingdom, is agreed by the counsel; and they have endeavoured to convince your lordships, that the Doctor has asserted nothing to the contrary; for they say, "the Resistance which the Doctor affirms the king to have disclaimed, was only a Resistance which tended to conquest; and that the Doctor did well to wipe off this imputation, for the parliament had declared it injurious to his rightful title to the crown, and had ordered a treatise to be burnt, which suggested a title by conquest; and that the Doctor having his eye in that expression on the matter of conquest, expressed the same by Resistance, which was applicable to the subject-matter before, and therefore ought not to be wrested to any other purpose."

This, my lords, is the turn which the counsel would give to the Doctor's assertion, That the king disclaimed the least imputation of Resistance. And indeed the words of the Sermon are so plain and particular, that they are forced to have recourse to this evasion of a Resistance by conquest: but I wonder gentlemen can argue in this manner, and at the same time speak of reading the words with candor and ingenuity; when it is most apparent that there is no previous discourse of a title by conquest, or of any treatise in which it had been asserted, that could give occasion for his vindicating the late king from any such imputation, or to which these words can in any construction be applied; for the Doctor says nothing of conquest, till after he had asserted that the king disclaimed the least imputation of Resistance; and then he goes on, and lays another foundation for the settlement upon the Revolution, by grounding it upon the vacancy of the throne, before he says any thing about conquest, or mentions the book which hath pleaded that title; and even then he condemns that title for no other reason but because it implied Resistance; which plainly shews, that his argument was carried on upon the subject of Resistance, and not upon that of conquest.

And the answer which they have given to that part of the Article, whereby he is charged with asserting, that to impute Resistance to the Revolution, is to cast black and odious colours upon his late majesty and the Revolution, is equally evasive.

What they have offered to your lordships upon this head is, that the Doctor is not speaking of the utter illegality of Resistance, when he introduceth his discourse about casting black and odious colours, by saying our adversaries think they have us sure and unanswerable on this point, when they urge the Revolution of this day in their defence; but of the damnable:

positions with which the Doctor charges the new preachers and new politicians, in the words immediately preceding: and in this place it is, that the Manager appointed to maintain this Article is charged with omitting about twenty or thirty lines between the general doctrine and the passage concerning the Revolution, in which several distinct and entire sentences are contained, concerning those persons and their principles, to which that passage entirely relates: and your lordships are told, that to apply the instance of the Revolution to justify such wicked principles, is what the Doctor calls casting black and odious colours upon his late majesty and the Revolution.

But the Commons take it to be very clear, that upon stating of the whole paragraph, and all the words in the order in which they lie, and upon comparing the several passages, it will manifestly appear, that what the Doctor said about casting black and odious colours upon the Revolution, can be applied only to those who maintain that the Resistance used to bring about the Revolution was lawful and just, and that the persons he calls our adversaries, are such as urged the Revolution in opposition to his general doctrine of the utter illegality of Resistance upon any pretence whatsoever: and not to those who urge the Revolution in defence of those damnable positions, which, he says, the new preachers and new politicians had laid down.

This the Commons apprehend to be the only meaning that his words in any construction can bear; for the point he is speaking of, and which he says his adversaries thought they had him sure and unanswerable upon, must be some certain, single position which was mentioned before, some one position or principle, and not many; for it is 'this point,' not 'these principles;' and that single point could be no other than the point of Resistance: and the persons he calls his adversaries, who think they have him so sure, can be no other than those who deny his general doctrine, and not those new preachers and new politicians, who say the people have a power vested in them to cancel their allegiance at pleasure; because those who deny this general position of the utter illegality of Resistance, as applied to any one particular case, are certainly his adversaries, and enemies to his fundamental doctrine: for whoever can find an excepted case, or shew an instance in which Resistance is lawful, destroys his general assertion. And he sufficiently shews, he meant those who opposed his general doctrine of absolute Non Resistance, by our adversaries, when he says that they urged the Revolution of that day in their defence; because the Resistance at the Revolution, which was founded in unavoidable necessity, could be no defence to a man that was attacked for asserting that the people might cancel their allegiance at pleasure, or dethrone and murder their sovereign by a judiciary sentence: for it can never be inferred from the lawfulness of Resistance at a time when a total subversion of the government both in Church and State was intended, that a people may take up arms, and call their sovereign to account at pleasure; and therefore, since the Revolution could be of no service in giving the least colour for asserting any such wicked principle, the Doctor could never intend to put it into the mouths of those new preachers and new politicians for a defence; unless it be his opinion, that the Resistance at the Revolution can bear any parallel with the execrable murder of the royal martyr, so justly detested by the whole nation; or that there was no other difference between the two cases, than what the learned gentleman, who first spoke for him, was pleased to mention in the conclusion of his argument, by quoting an odious expression which I forbear to repeat: but it was very proper to take notice of the Resistance at the Revolution, as an objection to his general doctrine, for it really is so; and it is impossible that doctrine can be true in its full extent, if the Resistance at the Revolution was lawful; for it is most apparent, that the justice of a Revolution, founded in Resistance, and the principle of Non Resistance upon any pretence whatsoever, can never stand together.

And therefore he could mean nothing, by the point his adversaries thought they had him so sure upon, but the general position of Non Resistance, which was the only point contended for in that place; and he must mean those only who denied his doctrine of absolute Non Resistance, by 'our adversaries:' and having no other way of maintaining the utter illegality of Resistance upon any pretence whatsoever, and of answering the case of the Revolution, which, from the Resistance that was in it, was made an objection; he goes on and denies the Resistance, by saying, That the king solemnly disclaimed the least imputation of Resistance; and calls those who say that there was any Resistance in the Revolution, the greatest enemies of that and his late majesty, and the most ungrateful for the deliverance, who endeavour to cast such black and odious colours upon both.

This, my lords, is plainly asserting, that to impute Resistance to the Revolution, is to represent it as black and odious; and this assertion is fairly collected from the plain course and tendeney of his argument, not from strained inferences and innuendoes, not from supposed or forced constructions, but from his own words, as they lie together, taken in their natural and genuine sense, and is the only construction that can give them any reasonable meaning or coherence.

And therefore the Commons apprehend, that the charge against the Doctor, for asserting, that to impute Resistance to the Revolution, is to cast black and odious colours upon his late majesty and the Revolution, is fully proved, and stands unanswered.

But though the charge, and the passages produced for the proof of it, are so very particular, and directly pointed at the Resistance

used to bring about the late happy Revolution, yet the Doctor and his counsel are pleased to say, "That he has only asserted the doctrine of Non Resistance in general terms, as it has been taught by the Apostles, the Homilies, and the Fathers of the Church in all ages: that in this case, as in all other general propositions, cases of unavoidable necessity, as the Revolution undoubtedly was, are always understood to be excepted; and that there is no other difference between the gentlemen of the House of Commons and the Doctor, but whether, when the general rule of obedience is taught, the particular exceptions which may be made out of that rule are always to be expressed? or, whether, when the general rule is laid down, the particular exceptions are not more properly to be understood or implied?" And upon this ground they have been very elaborate, and have produced many proofs to satisfy your lordships, that the Doctor's general assertion of the utter illegality of Resistance to the supreme power, upon any pretence whatsoever, without mentioning any exception, is warranted by the doctrine of the Church, and by the law of the land.

But, with great submission, all this pains might have been spared: for it is plain that the Doctor is not impeached for preaching a general doctrine, and enforcing the general duty of Obedience, but for preaching against an excepted case, after he has stated the exception. He is not impeached for preaching the general doctrine of Obedience, and the utter illegality of Resistance upon any pretence whatsoever; but because, having first laid down the general doctrine as true, without any exception, he states the excepted case, the Revolution, in express terms, as an objection; and then assumes the consideration of that excepted case, denies there was any Resistance in the Revolution; and asserts, that to impute Resistance to the Revolution would cast black and odious colours upon it. This, my lords, is not preaching the doctrine of Non Resistance in the general terms used by the homilies, and the fathers of the Church, where cases of necessity may be understood to be excepted by a tacit implication, as the counsel have allowed; but is preaching directly against the Resistance at the Revolution, which in the course of this debate has been all along admitted to be necessary and just, and can have no other meaning, than to bring a dishonour upon the Revolution, and an odium upon those great and illustrious persons, those friends to the monarchy and the Church, that assisted in bringing it about. For had the Doctor intended any thing else, he would have treated the case of the Revolution in a different manner, and have given it the true and fair answer; he would have said, that the Resistance at the Revolution was of absolute necessity, and the only means left to revive the constitution; and must be therefore taken as an excepted case, and could never come within the reach or intention of the general doctrine of the Church. But instead of this, he denies that there was any Resistance in the Revolution, and represents it as a scandal upon the Revolution, to say there was any Resistance in it: Those, says he, are the greatest enemies to it, who cast such black and odious colours upon it.

My lords, if extraordinary cases, if cases of necessity, which are implicitly excepted, are not to be stated at the time when the general prohibition is inculcated, and it would be of dangerous consequence in this particular instance of the doctrine of Non-Resistance, "by picking holes for the subject to creep out of his allegiance;" I submit it to your lordships' consideration, whether stating an excepted case, and then bringing it within the general prohibition, particularly in this instance of the Revolution, must not have the same pernicious consequence? "Does not this plainly shew what spirit the Doctor is of, and what he aims at?" But your lordships have been told, that "What the Doctor asserts concerning the utter illegality of Resistance to the supreme power, can never be applied to the Revolution; for the legislative, the King, Lords, and Commons, is the supreme power; and there was no Resistance to the Lords and Commons, for they joined with his late majesty in bringing about the Revolution; the Resistance was made only to that unfortunate prince who was then upon the throne." But it is plain, from his applying the illegality of resisting the supreme power to the case of the Revolution, that he meant the executive power, which was then resisted; and he uses sovereign and prince as synonymous terms with the supreme power, in other parts of the same paragraph of the Sermon; for he speaks of calling the sovereign to account, and of cancelling allegiance at pleasure, which can be due only to the prince; which shews, that the prince only, and not the legislature, can be understood by his supreme power.

I shall not only trouble your lordships, to shew that the Resistance used at the Revolution was consistent with the doctrine of the Church, and with the law and constitution of England: This is no part of the controversy, and is not disputed by the counsel; for they agree such cases to be excepted out of the general rule, and profess to use the several passages that have been read to your lordships only to excuse or extenuate the Doctor's offence, and not to arraign the justice of the Revolution; and therefore I shall not enter into a particular examination of them, but only observe, that if the books, out of which these passages were taken, were narrowly examined, it is possible some expressions might be found, to shew that the authors never intended that their general rule should extend to cases where the total subversion of a government was aimed at. For your lordships must needs have observed, from the use that has been made of the book of a learned prelate, called "A Vindication of the Authority, Constitution and Laws of the Church and State of Scotland;" printed in 1673, that a

perfect state of truth is not altogether to be depended upon, from the proofs that have been collected out of several authors, and read to your lordships; and that the sincerity of the collector is very much to be questioned: For that book was produced to prove the duty of absolute submission, and a passage was read for that purpose; but when the managers looked into the book, they found another passage, where the author, stating the case of abuses tending to a total subversion, allows, that, in such a case, the supreme power may be administered by another: Which shews, that this reverend prelate, who was so instrumental in the Revolution, did not act in contradiction to his former sentiments, (as was insinuated, by citing this treatise;) but was firm and constant to himself, when he embarked in that glorious enterprize.

Several sermons that have been preached since the Revolution, have been likewise offered to your lordships, to shew that the doctrine of Non-Resistance has been delivered in general terms; but these can be of no service in his defence, for the reasons that have been given. Besides, the Commons do not think themselves concerned to enter into the examination of private opinions. And for those that have been preached by the right reverend fathers of the Church now living, they are the best expositors of their own meaning; and I should mis-spend your lordships' time, to enter into any explication of them. The Doctor has appealed to the right reverend fathers of the Church; to these right reverend fathers we leave him; not doubting but the nation will be satisfied how much they are concerned for the honour of the Revolution, and the security of the present happy establishment under her majesty, by the just judgment they will give upon this occasion.

And as to the laws of the kingdom, there needs little to be said, after what the learned gentleman who spoke last, has offered to your lordships; especially since the counsel for the Doctor have all of them owned, that the general expressions in the laws do not extend to any such case as that of the Revolution, which no municipal law can be supposed to include. And if Doctor Sacheverell had been satisfied with laying down the general doctrines of Obedience and Non-Resistance, in the manner the laws have done, the Commons had never given your lordships this trouble. It is his entering into the debate of what is agreed by his own counsel to be an excepted case, and his arraigning the justice of the Revolution, (which has been already stated at large to your lordships) that has given occasion for the prosecution upon this Article.

Besides this, there have been other things said in the Doctor's behalf.

The Commons had alleged, that to shake the justice of the Revolution, and the validity of those acts of parliament, by which her majesty's title to the crown was declared, and the succession settled in the Protestant line, was a matter of the greatest consequence, at a time when the hereditary right to the crown was contested; and that the friends of the Pretender could advance his interest upon no other ground. But it has been urged for the Doctor, that he could never mean any service to the Pretender; for he asserts the hereditary right to be in the queen; and that those who deny her hereditary right, are most like to bring in the Pretender. And by this answer, they insinuate, that the Doctor has asserted an hereditary right in her majesty; and that those who defend her parliamentary title, deny her hereditary right. The passage they cite for his asserting an hereditary right in her majesty, is page 2, where he calls her majesty, the good and pious relict of the royal family: and they argue, that if her majesty be the relict, and the only prince of that family left, she must have the hereditary right of course.

This passage your lordships cannot but observe, requires some straining, to give it any appearance of answering the purpose to which they would apply it; and after all, it can carry no such meaning: her majesty is not the only descendant of the royal family now in being; there are several branches of it yet remaining; and I cannot believe, that the gentlemen who use this argument, intend to exclude the illustrious house of Hanover from being part of it. In the next place, they turn it upon the Commons, as if they denied the hereditary right (which they shall ever avow) when they asserted the title by act of parliament. I submit it to your lordships, whether any thing more was said, than that the hereditary right was contested? And this is notorious to all the world—is taken notice of in our Oath of Abjuration, and was claimed two years ago, by the Pretender's attempting an invasion. And in such a case, it is certainly the duty of every subject, to make good all the fences which guard her majesty's title to the crown. And, my lords, we have reason to lay some weight upon a parliamentary title, since the Protestant Succession entirely depends upon it; and to defend the power of parliament, to limit the succession of the crown, since the Doctor has offered to your lordships in evidence a Decree of the university of Oxford, in the year 1683, where is this proposition, viz. "That it is lawful to preclude the next heir from his right and succession to the crown, was solemnly condemned, as false, seditious and impious:" which I the rather take notice of, because the Doctor relies so much upon the authority of that university. But I must take leave to say, that if the same principle should still continue to be taught, or to be believed in that university, where so many of our gentlemen receive their first impressions, it must one time or other involve us in blood, and leave posterity in endless disputes about the title to the crown; and therefore it is of the greatest consequence to her majesty and the security of her person and government,

the continuance of the succession in the Protestant line, and the peace and happiness of this kingdom, to maintain the power of parliament to settle the succession of the crown; which has been exercised in all times, and frequently resorted to by her majesty's greatest and wisest predecessors. This is not to make way for the Pretender, but to shew that he is effectually and legally excluded; and that her majesty has not only the hereditary right, but the sanction of an act of parliament, which has been always thought sufficient to bind the succession to the crown, and is the plain way to establish her majesty's throne against all attempts whatsoever.

But your lordships are told, that these Sermons were not preached with a seditious intention; and that the Doctor can never be supposed to have a design to undermine the government, by preaching up the utter illegality of Resistance.

This, my lords, has indeed some shew of an excuse; but if your lordships consider in what manner he has applied his doctrine of Non-Resistance, and the use he has made of it, together with the general design of the Sermon, which is a virulent invective throughout; it will appear, that he could not take a more proper course to incite the people to sedition, and to create jealousies and discontents in the kingdom. For, first, he endeavours to shew, that if there was any Resistance in the Revolution, the foundations of our present happy settlement were laid in an unlawful force; because such Resistance was, as he says, utterly illegal, odious, and unjustifiable. And having laid this ground, he charges her majesty, and those in authority under her, with a general mal-administration: and what inference can the people make from such positions as these; but that the government they are under is ill founded, and therefore no obedience is due to it; and since there is a general mismanagement in the whole administration of the executive power, it is their interest to get rid of it as soon as they can?

This, my lords, is the plain tendency of his whole discourse; and whose interest is best served by such discourses as these, whether that of her majesty, our most gracious queen, or that of the Pretender, I submit to your lordships' impartial consideration.

My lords, the Doctor will have no reason to complain of being hardly used, in having his intentions censured as seditious, if he considers what that great prelate, my lord archbishop of York, has said in the Sermon that has been produced in evidence before your lordships; in which there is this paragraph, viz.

"They are the factious, they are the setters up or abettors of parties, who endeavour to destroy, or unsettle, or disparage, or at least to hurt and weaken the government and the laws, as they are established; let the principles upon which they go, or the pretences they make, be what they will."

And if his seditious intentions be apparent from the Sermon, his having taken the Oaths of Allegiance, his signing the Association, and his taking the Abjuration, are so many aggravations of his guilt.

I have troubled your lordships a great while; but I cannot forbear taking notice of one thing, which the Doctor has complained of as a hardship; I mean, that he has been prosecuted in this public manner by an impeachment, by which, he says, he shall have been abundantly punished, though he should have the happiness to be at last acquitted. But this complaint is answered by his own counsel, who acknowledge his case to be a cause of very great moment; and that the points now under your lordships' consideration, are proper only to be settled in parliament. And certainly, no other course could have been so proper: for when the foundations of the government in Church and State are apparently struck at, and undermined, under pretence of zeal for the constitution; when her majesty's title to the crown is endeavoured to be weakened, under the colours of obedience and loyalty; when the quiet and repose of her majesty's Protestant subjects is disturbed, under a pretended zeal for the good of the Church; when the safety of the Church is in the greatest danger, from those who declare the most affectionate concern for her welfare and prosperity; when the fathers of the Church are defamed, by those who pretend the greatest reverence for the episcopal order; and when her majesty's happy administration is publicly vilified and exposed, in the most audacious and insolent manner; where should the Commons apply for justice, but to this supreme judicature? Or, where could they expect an adequate remedy to these great and growing evils, but in full parliament?

They have therefore brought this great offender before your lordships; and have the highest satisfaction, in a full assurance of your lordships' impartial judgment.

Mr. *Lechmere.* My lords, the gentlemen who have now spoke before me, have gone through the substance of the reply to this first Article: they have shewn to your lordships the weakness and vanity of the defence, which has been made to it; and have fully re-asserted this part of our charge, by which Dr. Sacheverell stands accused, in the name of the Commons of Great Britain, of condemning the necessary means used to bring about the happy Revolution.

Your lordships' consideration of this branch of our impeachment, and of what has been offered to you in maintenance of it, has, doubtless, created in your minds an impression equal to its weight, and to the many great consequences which depend upon it: but we persuade ourselves, that when you reflect on the nature and method of the defence, it will more clearly discover to your lordships and the world, how necessary a task the Com-

mons have taken on themselves in this prosecution; of what high concern it is to her majesty and her government, and to our common security, that this fundamental question should receive this public and solemn discussion; that the false zeal, which the disguised enemies of her majesty's title have the confidence to put on, by endeavouring to cover the worst designs, under the sacred names of God and religion, and the strongest professions of loyalty and allegiance, may be brought to the test, and the true foundations of the safety of the kingdom be understood and asserted.

The part assigned me in opening the charge, leads me to take notice of some passages which have fallen from the counsel; and though what I shall first mention, has been already observed and fully refuted, yet I must beg your patience to resume it a little. The gentleman who began the Defence, said, "That it was insisted on the first day of the Trial, that the Doctor had not only asserted the utter illegality of Resistance on any pretence whatsoever; but that he had likewise declared himself, that the Revolution was not such a case as ought to be excepted out of his general rule, and this he said, he denied; and if such an expression could be found in the Doctor's Sermon, he should think no punishment too great for him." Your lordships could not but observe the argument which immediately followed: "It is one thing," says he, "expressly to affirm the Revolution is such a case as ought not to be excepted, and another thing not to make that exception." You were told, indeed, in the beginning of the same discourse, and afterwards by the Doctor himself, That his general assertion of the utter illegality of Resistance on any pretence whatsoever, did not relate to the Resistance used to bring about the Revolution, it being applied to the supreme legislative power, to which no Resistance was then made, the Lords and Commons joining in it. This, my lords, is a meaning which the Doctor had not in view when he preached the Sermon; for, by observing the passages, you will find, that the words "supreme power," are no part of the assertion of the utter illegality of Resistance on any pretence whatsoever. He doth, indeed, affirm unconditional obedience to the supreme power in all things lawful; but the illegality of Resistance is indefinitely and universally affirmed, and not restrained to the supreme power. It is likewise evident, not only from his mentioning the case of the Revolution, which was the case of Resistance to the king, as an objection to his general rule of the utter illegality of Resistance, but likewise from the subsequent parts of the same paragraph, that the Non-Resistance which he preached up, was Non-Resistance to the supreme executive power; and, indeed, this is still more evident from the fallacy of that, which is offered to induce your lordships to think otherwise, it being undeniable, that the Lords and Commons did not join in that Resistance, as part of the legislative and supreme power, but as part of the collective body of the nation. This subterfuge, frivolous as it is, being soon departed from, the argument proceeded upon the supposition, that the general assertion in the Sermon was to be understood of the supreme executive power. I return, therefore, to the objection as stated before, which being delivered with uncommon ostentation, your lordships will allow me to enter into the examination of it. "The subjects' obligation to an unconditional obedience to the supreme power in all things lawful, and the utter illegality of Resistance on any pretence whatsoever," is the Doctor's general rule, which he affirms to be the security of our government, and the belief of this, the very pillar on which it stands. Your lordships may here observe, that the Doctor, in delivering his general rule, has gone pretty much beyond that Apostle he would be thought to imitate: the Apostle in general terms enjoins the duties of obedience and subjection to the higher powers, not mentioning any exception when he lays down those precepts. The Doctor goes on, and his next sentences contain a general observation, That though his fundamental doctrine was now become unfashionable, and exploded as a dangerous tenet, inconsistent with the rights, liberties and property of the people; yet, God be thanked, it still continued to be the doctrine both of Church and State: and then follow these words, "Our adversaries think they effectually stop our mouths, and have us sure and unanswerable on this point, when they urge the Revolution of this day in their defence." Nobody can doubt what Revolution the Doctor means, nor, that under the term Revolution, by which he expresses the objection made to the general rule of Non-Resistance, he meant the Resistance supposed to be made at that Revolution. This he states as the unanswerable objection made by his adversaries to this point, to his rule of Non-Resistance on any pretence whatsoever.

If your lordships collect the sense of that paragraph thus far, it will stand thus: those persons who explode absolute Non-Resistance to the prince as a tenet dangerous to liberty; in defence of that their opinion, object to us, who avow this tenet as the honourable and distinguished characteristic of our Church, the Resistance used to bring about the late happy Revolution, as an exception out of our general rule of Non-Resistance. The Doctor having thus laid down his rule in universal terms, and expressly taken notice of the case of the Revolution as an objection raised against it by other people; your lordships are next to consider what becomes of this objection; in what manner is it treated by him, and what judgment does he pass upon it? My lords, the Doctor does not drop the objection without considering it further; he is not silent in the matter; he doth not leave this as an exception implied, and to be supposed by the general rule; he proceeds and argues expressly upon it for two or three sentences together: the Doctor's expressions in this respect also are not entirely agree-

able to those of the Apostle. In the next place, doth the Doctor yield the objection to his adversaries? Doth he allow the Resistance used to bring about the late happy Revolution to have been a lawful Resistance, and to be an exception out of his general rule? No, my lords, just the contrary: he is so far from agreeing with his adversaries in this point, or giving way to the exception, that in vindication of the Revolution, as he would be thought to speak, he pronounces those who make the exception, and contend for the lawfulness of that Resistance, to be enemies to the Revolution; and that Resistance, which the Commons assert to be the necessary means by which it was brought about, he describes to be odious colours cast upon the Revolution. In his next sentence he insinuates, that there was no Resistance in the Revolution, and to that end, misrepresents his late majesty as having disclaimed it; and with the same intent likewise, that the parliament set the crown on his head, on no other title than of the vacancy of the throne; and still the more effectually to delude his hearers into the belief of his general assertion, grossly and ridiculously perverts the censure past by a future parliament upon the notion of conquest, as a condemnation of that Resistance. Having thus considered this objection of the Revolution, and the following parts of his paragraph being expressions of triumph over his adversaries, whose objection he would be supposed to have confuted, towards the close of it he uses these words, as his conclusion and judgment upon it: "in short, as the English government can never be secure on any other principles but strictly those of the Church of England, so he will be bold to say," &c. His general rule of Non-Resistance, on any pretence whatsoever, he had before laid down as the doctrine and principle of the Church; which, after having considered the case of the Revolution as an imaginary exception to it, he re-asserts in those words. And what clearer indication can your lordships receive of the Doctor's intention in his general assertion? Can your lordships, or any body that shall consider the tenor of that part of his discourse, retain any doubt, whether he has plainly and fully declared himself, That the Resistance used to bring about the late happy Revolution was odious and unjustifiable, and not to be excepted out of his fundamental rule of the illegality of Resistance on any pretence whatsoever? And, my lords, can it be said that this interpretation of his discourse is strained and unnatural? Is this part of our charge maintained by conjoining distant and independent passages? Or, is not the connection clear and necessary, and the sense we contend for, the only sense the words can properly bear, in the most candid and genuine interpretation of them? The gentleman, whose objection from the bar I have been considering, said, "That it is one thing expressly to affirm that the Revolution is not to be excepted, and another thing not to make that exception." But though the words of the Sermon are not an express and literal affirmation, yet if this construction appears to your lordships to be necessary and certain, they will be taken by you to be an ample and undeniable declaration of his mind; and this poor shift, thus emphatically insisted on at the bar, will amount to no more than what the Doctor had before said in his Answer in plainer words, That he had not maintained the necessary means to be odious and unjustifiable, because he had not made use of those very words.

The next passage which I shall observe to your lordships, fell from the gentleman who spoke third in defence of this Article; his words were these: I have been careful and exact in collecting them. "One learned gentleman," says he, "did observe, that there was an original contract; and that by that contract, if the executive power invaded the rest, that contract was broke, and the people discharged from their allegiance; but he did not think fit to take notice when that contract was made. I would fain know, whether it was before Magna Charta, or since; if it was before, it is much no mention was made of it there; for that has been always looked upon as the great charter of the rights of the people. Was it before 25 Edw. 3? Then I would know, whether that contract, made before the 25 Edw. 3, could ever discharge that Act which was made after it? If it doth discharge the subject of their allegiance, I have never yet known it pleaded to any indictment for high treason upon that Act; and therefore, till the legislature shall determine what that contract is, and what breach of it shall discharge the subjects of their allegiance, I must take leave to say, that Resistance stands still upon the foot of the statute of 25 Edw. 3."

My lords, the nature and consequence of this passage would bear a much more ample consideration than my time has allowed me to give it, or than may be fit to trouble your lordships with on this Reply; but I conceive a short notice of it, and of the near relation it bears to the matter now before you in judgment, may yield a pretty clear discovery and explanation of the whole. But the distance of time since the opening of the Charge, and the many palpable misconstructions which some of the counsel have allowed to themselves, of what has been offered by some of us in behalf of the Commons, makes it necessary for me, even in this particular, to remind your lordships of the connexion of the discourse, out of which this observation was raised. Your lordships were acquainted, in opening the Charge, with how great caution, and with what unfeigned regard to her majesty and her government, and to the duty and allegiance of her subjects, the Commons made choice of the words 'necessary means,' to express the Resistance that was made use of to bring about the Revolution, and with the condemning of which the Doctor is charged by this Article; not doubting, but that the honour and justice of that Resistance, from the necessity of that case, and to which alone

we have strictly confined ourselves, when duly considered, would confirm and strengthen; and be understood to be, an effectual security of the allegiance of the subject to the crown of this realm in every other case, where there is not the same necessity; and that the right of the people to self-defence, and preservation of their liberties by Resistance, as their last remedy, is the result of a case of such necessity only, and by which the original contract between king and people is broke. This was the principle laid down and carried through all that was said with respect to allegiance, and on which foundation, in the name, and on the behalf of all the Commons of Great Britain, we assert and justify that Resistance by which the late happy Revolution was brought about. When the gentleman from the bar endeavoured thus, in a ludicrous manner, to explode the original contract between the king and the people, he must not be supposed to be ignorant, that those very words are part of the Vote of the Abdication, the Vote of both Houses of Parliament, at the time of the Revolution, antecedent to that settlement of the crown, on which her majesty's parliamentary title, and our present establishment is founded. I have thought it necessary to transcribe that proceeding from your lordships' Journals, now lying on your table, and will state it to you as I have taken it from thence.

Upon the 29th of January, 1688, a Message was brought from the Commons by Mr. Hampden, and others, who said, "The Commons taking into their consideration the state of this kingdom, had passed a Vote, to which they desired your lordships' concurrence;" which Vote was as follows, "Resolved, that king James the 2d having endeavoured to subvert the constitution of the kingdom, by breaking the original contract between king and people; and by advice of jesuits and other wicked persons, having violated the fundamental laws of this kingdom; and having withdrawn himself out of this kingdom, has abdicated the government, and the throne is become thereby vacant." Your lordships' House resolved itself into a committee of the whole House, and the Vote containing in it divers particulars, upon the 30th day of January, was considered by paragraphs; the first of which was, "That king James the 2d having endeavoured to subvert the constitution of the kingdom, by breaking the original contract between king and people:" To which the committee, and the House afterwards, agreed without any amendment. Now, when it appears to your lordships and the world, that breaking the original contract between king and people, were the words made choice of by that House of Commons, with the greatest deliberation and judgment, and approved of by your lordships, in that first and fundamental step made towards the re-establishment of the government, which had received so great a shock from the evil counsels which had been given to that unfortunate prince, and that they are stated in that Vote as a consequence of his endeavouring to subvert the constitution of the kingdom; I need not say how much the lawfulness of that Resistance, which had been before made by the people, and which is now the immediate question, nay, how much the justice of the Revolution itself would be affected by a condemnation of that position; And what light doth it give to the question now before your lordships, when at your bar, in defence of a person accused by the Commons, for condemning the necessary means which brought about the Revolution, you have heard that original contract, at that time so solemnly declared to be a fundamental principle, publicly denied, ridiculed, and endeavoured (in what manner it is easy to judge) to have been exploded?

My lords, the truth of that position has its foundation in the nature and essence of the constitution of our government, and it will stand so long as this remains; and the sanction it has received from your lordships, and from that House of Commons, who had with so much wisdom and bravery asserted the rights of the kingdom in that extraordinary juncture, and who, pursuant to that Resolution, settled the crown upon her sacred majesty, ought to render it indisputable, so long at least as that establishment is preserved to us. But yet, could I think it seasonable to enter into it, to consider more particularly the nature of our government, to draw together some of the many incontestible evidences of its original freedom, to consider the nature, antiquity and history of the Coronation Oath, and the Oath of Allegiance, and the mutual obligations and consequences arising from them to the prince and people: Was I to go over the several branches that make up the ancient frame of our government, and which speak and express a consent and compact between the prince and people in their institution; and was I to observe that inseparable relation and equal security which they import between the crown and the subject, and which are so many infallible tokens of original consent stampt upon them; the truth and certainty of that position of an original contract between the king and people, might be laid down to your lordships in demonstrative terms. The gentlemen that raised this observation, soon afterwards, in the same discourse, supposed, that by the original contract, the original constitution was meant; how strictly proper that manner of speaking might be found to be, I will not now determine; yet thus much may with certainty be concluded, that the denying the original contract, is not only to disavow the whole proceeding at the time of the Revolution, but to renounce the constitution itself, to disclaim those many and undeniable proofs and testimonies of it, which almost every part of our history, our records, and memorials of antiquity, will furnish: To deny the original contract of government, is to contradict and condemn the voice and tenor of all our laws, of every act of the supreme legislative power, the force and efficacy of which

exists upon the consent of the Crown, Lords and Commons, and are therefore so many lasting and unerring proofs of that, as the original foundation of that supreme power; it is not only to oppose the constant judgment of all learned men, who have understood and wrote impartially of our government, but even the sense of many of those writings which have been produced and read to you in the Doctor's defence, and more particularly that of the judicious Mr. Hooker: To deny and condemn the original contract between king and people, what other consequences could it produce, than to unhinge the government, and to destroy that excellent balance of power, which is secured by it, and by which it has been so long preserved? It must weaken the ancient and just prerogatives of the crown, subvert the foundations of your lordships' legislative and judicial powers, render the parliamentary rights of the Commons precarious and uncertain, and terminate at length, in that absurd, yet dangerous opinion, of the patriarchal right, which, when together joined with the doctrines of absolute and unlimited Non-Resistance, and unconditional Obedience of the subject to their prince, completes that fatal system, which has been of late so much contended for towards the enslaving mankind.

But your lordships will consider further, what use and application was made of this passage by the counsel; his conclusion was, "That till the legislature had determined what the contract was, and what breach of it shall discharge the subjects of their allegiance, he took leave to say, that Resistance still stood upon the foot of 25 E. 3."

My lords, we stand here intrusted to maintain the charge contained in our Article, to assert the justice of that Resistance only which brought about the late happy Revolution; and that being the Resistance in question, and to which alone we have applied ourselves, and in support of which the original contract was mentioned; what is the plain English of this inference drawn from the denial of it? Does it not amount to an open and positive declaration from the mouth of Doctor Sacheverell's counsel, that that Resistance which was the necessary means used to bring about the late happy Revolution, instead of being an honourable and lawful Resistance, was an act of rebellion and high treason?

Having considered these particulars, I beg your indulgence to make a few observations on the nature and method of the Defence to this Article: your lordships will remember, though it seems to have been totally forgot on the prisoner's part, that the maintenance of this Article has not rested on the Doctor's general assertion alone, but upon the following passages, now stated to you; from whence we have undertaken to convince your lordships, that Dr. Sacheverell has applied that general rule of Non-Resistance to the particular case of the Revolution; and this having rendered the independent consideration of the general assertion wholly immaterial, when you afterwards heard the admissions that were made by the counsel, of the legality of the Resistance used to bring about the Revolution, your lordships might reasonably have expected, that the only question remaining on this Article would have been, how far those subsequent passages of the Sermon did evince the intent of the general assertion? But though the question has been thus plainly stated and maintained, and the method of the Doctor's vindication thus clearly pointed out to him, yet how little has been said? How little notice has been taken of this, which was his proper defence? The gentleman who began the Defence has, indeed, denied the charge of this Article; the force of that, and of his argument which followed, have been considered: but if your lordships shall not think fit to accept the single attempt as sufficient to acquit the prisoner, (together with a nervous observation of the interposition of some lines between the general assertion, and that sentence wherein the Revolution is named) how much will your lordships find, throughout that long and laboured harangue, that can be judged by you at all material to the true question before you? For though the general doctrine of Non-Resistance, the doctrine of the Church of England, as stated in her homilies, or elsewhere delivered, by which the general duty of subjects to the higher powers is taught, be owned to be, as unquestionably it is, a godly and wholesome doctrine; though this general doctrine has been constantly inculcated by the reverend fathers of the Church, dead and living, and preached by them as a preservative against the Popish doctrine of deposing princes, and as the ordinary rule of obedience; and, though the same doctrine has been preached, maintained, and avowed by our most orthodox and able divines from the time of the Reformation; and, how innocent a man soever Doctor Sacheverell had been, if, with an honest and well meant zeal, he had preached the same doctrine, in the same general terms, in which he found it delivered by the Apostles of Christ, as taught by the homilies, and the reverend fathers of our Church; and, in imitation of those great examples, had only pressed the general duty of Obedience, and the illegality of Resistance, without taking notice of any exception; yet what excuse can be derived, to the matter now in question, from such considerations as these, in favour of the Doctor, who has not only asserted the general rule in terms of the greatest latitude, but has expressly mentioned and disallowed the exception of the Resistance, which brought about the Revolution? And whatever is the language of our laws, repealed or in force, wherein the same general duty of subjects is stated, and the rule laid down to them, as necessary and fundamental for the safety of the crown and government, and the peace of the kingdom, and which are meant to enforce and secure their civil obedience in ordinary cases, (but which nobody will say can be construed to extend to the case of a

people threatened by their prince with total destruction, the utter subversion of their laws, and the loss of their religion and liberties, to a case of the last necessity, (such a case as the Revolution was,) yet no use can possibly be made of such declarations in our acts of parliament to justify the Doctor, who by his general assertion, has not only out-gone even those general declarations, but has undeniably applied it in condemnation of the case of the Revolution, which is the charge of this Article.

Your lordships will allow me to observe yet a little farther: the nature of this Article appearing to every body to be of that near concern to her majesty and her government, you have, indeed, heard very warm and pathetic expressions of loyalty, of very tender and dutiful regard to her majesty's title, and much labour and vehemence was used to persuade your lordships into a belief of this: but yet your lordships could not but observe, where the real stress and force of the argument was placed, and where it centered at last; your lordships will find, the great effort was made to establish the doctrine of Non-Resistance, and to inculcate this, in terms of the largest extent, in the same universal terms wherein the Doctor has delivered it; and, than which I am at a loss to find words that can extend it further: if your lordships should think fit to look back, with particular exactness, upon the several discourses which have been made from the bar on this Article, and for your more accurate judgment, shall think proper to lay them together, and observe their consistency; and if from such an examination, you should see cause to compare that which was first delivered, with that which was afterwards spoke by the Doctor himself, (for, my lords, between them the resemblance seems to be the nearest, and the difference between them in the notions of allegiance but very small,) your lordships may perhaps, in a great measure, collect from thence the true genius of this Defence. Your lordships will observe, in how different a manner, with what different zeal the main points in agitation have been handled by them; I mean the justice of the Resistance which brought about the Revolution, and the general doctrine of Non-Resistance. It has always been observed to you, that the Doctor himself made no admissions concerning the lawfulness of that Resistance, but has used expressions of due regard to the Protestant Succession; The gentleman who opened the Defence, it being, it seems, of no consequence to the present occasion, came to no declaration in this point of the Protestant Succession; but, as to the honour and justice of the Revolution, his approaches are nearer: he has acquainted your lordships, "That there is nothing further from our hearts, nor any thing less necessary for our Defence, than for us to call in question the justice of the Revolution." At another time, he delivered himself in general terms: "such a case (that is a case of necessity, a case never to be mentioned, but to be supposed and implied) the Revolution was:" but, in other parts of the same discourse, the expressions even concerning the Revolution will be found to be more reserved and wary, and always softened with some saving particle: thus shy and tender at the best, have the admissions been from two discourses, of the lawfulness of that Resistance which brought about the late happy Revolution: but as for the doctrine of absolute, unlimited Non-Resistance, by which, if it be not an erroneous doctrine, the justice of the Resistance, which was the necessary means that brought about the Revolution, (and in pursuance of which, the crown was settled on her majesty and the Protestant line) must for ever remain condemned. What fervency and copiousness of expression was used to establish that? What cautions have appeared to guard and secure this doctrine as inviolable? How often, and with what zeal was it inculcated, that the general doctrine was that doctrine which alone was to be preached and pressed? The exception, the case of necessity, the case of the Revolution, the only case contended for, was not fit to be mentioned: the Doctor's general rule was that alone, which was proper to be inculcated and believed; the excepted case never to be stated, but to be supposed or implied, and to be left to justify itself.

My lords, how comes it to pass that so little concern has been shewn, in the course of this debate from the bar, to that which was the proper Defence of the criminal, to clear the passages of his Sermon from the obnoxious meaning they had been shewn to bear? How comes it to pass, that the honour and justice of the Revolution is thus tenderly acknowledged; but yet all that has been said to support it, has by this gentleman been endeavoured to be enervated, and at the same time the extremest zeal shewn to establish the general position, though altogether immaterial? I will once more venture at a charitable reconciliation of those seeming inconsistencies: upon a very strict and minute recollection, your lordships will find that the Resistance, the necessary means used to bring about the Revolution, is never once acknowledged in that first discourse, in plain and express terms: the case of necessity in general, the case of the Revolution, was so ambiguously spoke of, and so skilfully given up, that, by the kind help of some happy distinction, when the season is proper, it will be easy to retrieve it. Though your lordships may remember some plausible expressions concerning the justice of the Revolution, yet you will find the real conclusions of the discourse tend to condemn it; and such remarkable instances chosen, such as the case of the two Spencers, which, being applied to the case of the Revolution, represent its principles damnable, its consequences detestable, and the assertors of it deserving banishment: your lordships will find the argument so well adjusted to the main point in view, to establish the slavish doctrine of absolute, unlimited, Non Resistance

that, if the worst should happen, even that against which we are now contending, the judicious reserves that gentleman has used on the point in question, and the real service he may be thought to have done to that slavish doctrine, may, in due time, raise a merit in favour of all its consequences.

But, as an undeniable evidence of a sincere affection to the case of necessity, the case of the Revolution, let me put your lordships in mind of the passage quoted from Mr. Pym, in his declaration against doctor Manwaring: the doctrine preached in those days, and for which he was impeached by the Commons, was, the attributing an absolute power to the king over the property of the subject, though with some deceitful limitations, as that of extreme and urgent necessity. Mr. Pym had shewn the vanity and fruitlessness of that limitation, it being left to the prince to determine what is an urgent and pressing necessity: and to represent the danger of such a case, of allowing any exception upon any pretence, even that of extreme necessity, he cites the charter of Lewis 10 of France to the duchy of Normandy, wherein that prince having acknowledged the franchises of the duchy, and granted to them, that for ever afterwards they should be free from all exactions from him and his successors, these words followed, 'unless great necessity required:' which small exception, Mr. Pym observed, had in time devoured all their immunities. Mr. Pym, in that speech, arguing against the position advanced by Dr. Manwaring, condemns the least pretence of any exception: the gentleman, who quoted this passage from him, having endeavoured to establish his general doctrine of absolute Non Resistance, the doctrine preached by Dr. Sacheverell, and having shewn the danger of mentioning any exception to it, even that of the case of necessity, and such a case, he had before told your lordships, the Revolution was, concludes from that instance, that such exceptions would in time devour all allegiance. This, my lords, hath been the method, these have been the arguments used to acquit the Doctor, to shew the innocence of his intention, and that there was no design either in his Sermon, or his Defence, to condemn the Resistance, the necessary means which brought about the late happy Revolution; and from these observations you may possibly discern the consistency of the whole Defence. I beg leave only to turn the case, to suppose a case of a real design to condemn the late glorious Revolution, and all the happy consequences of it: at a time, when express declarations of such a wicked and traitorous intention may not be judged proper; at a time when some plausible expressions of the justice of it, may be thought useful and necessary; and, at such a time, let the illegality of Resistance on any pretence whatsoever, be laid down and enforced in its utmost extent; let the danger of stating or mentioning any exception to it, be strongly inculcated; let the justice of the exception, even of the case of necessity, such a case as the Revolution was, be illustrated by an instance, wherein it is expressly condemned; and, may it not be said, it is easy to discern what spirit such a person is of, of what party he is, what he aims at, and what he intends; that he has not been speaking in defence of the late Revolution, cannot be looked upon to have been arguing for it, and to shew the justice of it, but was covering the treason of his heart, and under pretence of justifying one Revolution, was labouring to bring about another? But, what vain imaginations must possess those minds, which can flatter themselves into a belief, that even whilst they are maintaining principles that tend most certainly to undermine the foundation of her majesty's government, and the Protestant Succession, the most solemn protestations out of the same mouth, and in the same breath, should pass for an atonement with your lordships, or give satisfaction to any that hear them?

My lords, your lordships will consider the evident and necessary tendency of the doctrines, which have been preached by the prisoner, and have been again asserted, though not openly avowed, in their full extent and consequence, in defence of this Article. The doctrine of absolute Non Resistance, the condemning the original contract, renouncing the ancient legal constitution of the government, which is our title to our liberties, are positions, which can have no better tendency, than to shake the present settlement of the crown, and our present establishment, and to make way for the pretence of a natural and divine right of succession: are not those the principles taught and avowed by Papists and nonjurors, and whereon their hopes are founded? And are they more wholesome, or less dangerous, when they fall from the mouth, or drop from the pen of the prisoner, or are asserted in his Defence, though gilded over with specious pretences, and under the umbrage of a true son of the Church? If these doctrines of unlimited Non Resistance, of a sole hereditary and divine right of succession to the crown, are the very doctrines, on the belief of which, the professed enemies of her majesty and her government, inviolably engage themselves against her title, and against the Protestant Succession; if these are the tenets, by which they openly condemn the late glorious Revolution, and all its consequences: from which part of this Defence can your lordships collect the innocence of the prisoner? By what way of reasoning can it be concluded, that the same opinions, embraced by this gentleman, do not inevitably engage him in the same interest?

Sir *Peter King*. My lords, it is my part to reply to the Answer that has been given by the Doctor, to the Charge of the Commons of Great Britain, with relation to the second Article. When I was entrusted by the Commons to manage this part of the Charge, I both quoted and read the passages of the Sermon, to make

good that charge; I did not desire that any thing should be taken upon trust, nor any thing received against him, but what appeared from his plain express words, or by clear, necessary and unavoidable consequence. Indeed, after the whole Sermon had been read by the clerk, I thought it too great a trouble to your lordships, to have the clerk read over the particular passages again at the table, and therefore I read them myself, truly and fairly, as they were in his Sermon; and if I had done otherwise, the Doctor and his counsel would have set me right. I agree with the Doctor and his counsel, that in a case of this nature, and I will say further, in all cases whatsoever relating to crimes, the charge must be maintained by positive, plain words, or necessary and unavoidable inference, such as no reasonable man can withstand the light of. And therefore, if there was nothing in this case but dark hints, strained innuendoes, and forced constructions, I am sure, neither the Commons of Great Britain, nor myself, would appear before your lordships with an attempt to make out a charge of this nature; if it is not proved by plain, positive and express words, or necessary and unavoidable inference, I am sure your lordships will never convict him; because it would not be just and right so to do. It is a perverting of common justice to condemn a person without plain and direct proof; therefore what we represent to your lordships is, that by plain and clear passages in his Sermon, he is guilty of the charge in the second Article, of maintaining, That the Toleration granted by law is unreasonable, and the allowance of it unwarrantable; and that he is a False Brother with relation to God, Religion, or the Church, who defends toleration, and liberty of conscience.

When the Doctor put in his Answer to this Article, he had not found out that there was a toleration granted by law to the Dissenters; but his counsel have now found it out, and they do agree, that there is a toleration granted by law, and that it is that indulgence which is contained in the act made in the time of the late king and queen; but they insist at the same time, that the Doctor in his Sermon has not condemned or censured that toleration; they say he has condemned a toleration, but they insinuate there are two tolerations mentioned in his Sermon, the one a toleration granted by law, which he allows and approves of; and the other a general unlimited toleration, which they admit he does condemn; so that we are now agreed upon the word 'toleration,' and they do admit that he doth in his Sermon censure and condemn a toleration; but, say they, it is not the toleration granted by law, because he took care in his Sermon that his general expressions should not be misconstrued, and put in this express caution in the 20th page:—"I would not be here misunderstood, as if I intended to cast the least invidious reflection upon that indulgence the government has condescended to give them, which I am sure all those that wish well to our Church, are ready to grant to consciences truly scrupulous; let them enjoy it in the full limits the law has prescribed." This, they say, is an express and full declaration of his meaning, that he is not against the particular Toleration granted by law; and therefore all those other passages in his Sermon condemning toleration, are to be applied to a general toleration, and not the particular legal one.

When I made out this Charge, I mentioned this caution of the Doctor's, but at the same time submitted it, whether such a general expression as that is, could screen him from other plain passages in which he has condemned the Toleration; if in other places he has condemned it, this caution is but 'protestatio contra factum;' an oblique defamation may be as criminal as a direct one; in the common cases of scandal, if I obliquely defame another, and describe him so that it is impossible but every one must know him, it is no excuse that I do not positively accuse him; so that the question will be, whether the Doctor has not in the other passages cited against him, plainly censured and condemned the Toleration granted by law?

The first passage cited out of his Sermon, to prove this charge upon him, was in the 10th page; I trouble your lordships with reading it again, that I may be sure to do him no injury; the words are; "So that in all those cases before-mentioned, whosoever presumes to innovate, alter, or misrepresent any point in the Articles of the Faith of our Church, ought to be arraigned as a traitor to our State; heterodoxy in the doctrines of the one naturally producing, and almost necessarily inferring rebellion and high-treason in the other, and consequently a crime that concerns the civil magistrate as much to punish and restrain, as the ecclesiastical."

The former part is relative to what went before; the latter part is a general assertion, that "heterodoxy in the doctrines of the Church infers rebellion and high-treason in the State."

The relative part of this clause has relation to the several doctrines mentioned before; among which, one of the cases and instances of False Brotherhood is, "the affirming that the divine apostolical institution of episcopacy is a novel doctrine, not sufficiently warranted by Scripture; whoever affirms this, is guilty of an innovation or alteration of the Articles of our Church." Now the Dissenters of all sorts universally hold this proposition, and they are exempted from subscribing the 36th Article, which asserts episcopacy: "but," saith the Doctor, "though they are exempted, yet whosoever asserts this proposition, is to be punished as a traitor to the State, as well as an enemy to the Church."

The learned civilian of counsel for the Doctor says, that the reading the whole passage will show, that it was not intended for the Dissenters, but for one in holy orders; that if such an one should maintain this doctrine, he would be an apostate from his own order; now this

allegation is true, as it stands in page 8; absolutely considered in itself, it is there applied to men in holy orders; but as it stands in relation to this clause in page 10, it is a general assertion, that whosoever innovates, or alters that Article of the Church, which the Dissenters do, ought to be arraigned as a traitor to the State.

Another answer that hath been given hereto, is, that the Doctor there means those who are for innovations and alterations in matters of faith; which cannot respect the Dissenters or their Toleration, because the Dissenters agree with the Church in matters of faith, and differ only in matters of discipline. But if you give this turn to it, it alters the sense and meaning of the Doctor; for he is not speaking here of matters of faith, in contradiction to matters of discipline, but he is speaking in general of the Articles of Faith of our Church; "Whoever presumes in any of the cases before-mentioned to innovate, alter, or misrepresent any point in the Articles of the Faith of our Church, ought to be arraigned as a traitor to the State." Now what are the Articles of the Faith of our Church? Are they not the thirty-nine Articles? Are not they the Articles of the Faith and Religion of the Church? Doth not the thirty sixth canon expressly require the clergy to subscribe willingly, and *ex animo*, that all and every the Articles of Religion, being in number thirty-nine, are agreeable to the word of God? Now if the thirty-nine Articles be the Articles of Faith of our Church, and the Dissenters disbelieve the thirty-sixth Article; and if for that innovation or alteration they are to be arraigned as traitors to the State, what then is become of the Toleration, that exempts them from the penalties, and from subscribing the said thirty-sixth Article?

As to the general proposition immediately following in the same clause, viz. "Heterodoxy in the doctrine of the one, naturally producing, and almost necessarily inferring rebellion and high treason in the other, and consequently a crime that concerns the civil magistrate as much as to punish and restrain, as the ecclesiastical: I do not remember that any answer whatsoever was given to it by the Doctor or his counsel. And I pray your lordships cast your eyes on this, and see here is an affirmation, that any different opinion in any of the Articles of the Church, is a crime against the State. Now all the Dissenters are exempted by the Act of Toleration from subscribing three articles and an half, others from four and an half, and others from all. And when this Act grants them all these exemptions, shall it be affirmed that this heterodoxy allowed by that act is high treason and rebellion, and that they ought to be arraigned as traitors? I submit to every one's judgment, whether any thing can be more plain against the Toleration than this.

The next passage cited out of his Sermon, to prove the charge of the second Article, is in the 16th and 17th pages: "What could not be gained by comprehension and toleration, must be brought about by moderation and occasional conformity; that is, what they could not do by open violence, they will not fail by secret treachery to accomplish. If the Church cannot be pulled down, it may be blown up; and no matter with these men how it is destroyed, so that it is destroyed.

My lords, here is an affirmation, that toleration was doing open violence to the Church, that the False Brethren had a design by toleration to pull down the Church. Now the answer given to this by one of the counsel, is what one can scarce imagine he was serious in, viz. That this doth not suggest the Toleration to be unreasonable, or the allowance of it unwarrantable, but that it is rather a commendation of the toleration, because it shews that it could not do the Church any hurt, it could not pull down the Church, and therefore they have found out a more pestilent way, of occasional conformity and moderation. But all that can be collected from hence, is, that toleration is a less successful evil than moderation: Toleration was a storming the Church by violence, and an endeavouring to pull it down; but though by the good providence of God, it hath not been so successful an evil as moderation, which is a secret treachery to undermine the Church, and blow it up, yet it is an evil: And to suppose the Church to be either pulled down, or blown up, which way soever it be done, it is so great an evil, that every member of the Church must be for preventing it, and using all his endeavours to prevent both those evils; and therefore to represent toleration to be such an evil to the Church, as to be doing open violence to the Church and pulling it down, is an undue reflection on the Fathers of the Church, and on that parliament that granted that toleration, as if they concurred in endeavours to pull down the Church, and destroy it.

Another passage in page 14, of the Sermon, was cited by the counsel of the other side, as a passage cited by me to make out the charge against the Doctor; but herein they mistook me, it was not cited by me for that purpose, but to shew that the Doctor understood the Act of Indulgence to be a Toleration; and the passage was this, "Certainly the Toleration was never intended to indulge and cherish such monsters and vipers in our bosom, that scatter their pestilence at noon day, and will rend, distract, and confound the firmest and best settled constitution in the world."

I cited this passage to shew, that the Doctor himself, at the time he preached this Sermon, knew what was meant by the Toleration; and it plainly proves it, and the Doctor himself doth not now disown it. But as to the proposition itself contained in that part of his Sermon, I agree with him that the Toleration was not intended, and I hope will never be made use of, to support Atheism, Deism, Tritheism, or any such monsters and vipers, but only dissenting Protestants.

The next passage I cited was in the 8th page. "If upon all occasions to comply

with the Dissenters, both in public and private affairs, as persons of tender conscience and piety, to promote their interests in elections, to sneak to them for places and preferments, to defend Toleration and Liberty of Conscience; and under the pretence of moderation, to excuse their separation and lay the fault upon the true sons of the Church, for carrying matters too high; if to court the Fanatics in private, and to hear them with patience, if not approbation, rail at and blaspheme the Church, and upon occasion to justify the king's murder; if to flatter both dead and living in their vices, and to tell the world, that if they had wit and money enough, they need no repentance, and that only fools and beggars can be damned; and if these, I say, are the modish and fashionable criterions of a true Churchman, God deliver us from such False Brethren!" So that here the Doctor makes it one of the characters of a False Brother to defend Toleration, and Liberty of Conscience.

The Answer given to it is this, that where the Doctor blames those who defend toleration, it is not those that defend that only and singly, and do no other thing, but they must at the same time not only defend toleration, but excuse the separation, not by reason of the Toleration, but by laying the fault on the sons of the Church for carrying things too high: He does not blame them that barely justify Toleration, unless they fall too on the sons of the Church for carrying things too high. But whether or no that place is capable of such an interpretation, your lordships will be the best judges, by looking on the place, and considering whether any two of these characters are to be united in any one person to make him a False Brother. Whether these several characters are not so many different criterions of False Brotherhood; if he does not defend Toleration and Liberty of Conscience, if he does excuse their separation, and lay the fault upon the true sons of the Church, for carrying matters too high, &c. They are all different marks of False Brotherhood; so that whosoever defends Liberty of Conscience, and the Toleration, is a False Brother.

It was also answered, that in the Act of Indulgence there are a great many restrictions; and therefore this passage must be understood of a Toleration of such as are not qualified by the act to receive it; And for that end the act was read, in which are several restrictions; and the Toleration is not unlimited, but to persons under such and such qualifications, conforming themselves to the rules there laid down. But what foundation is there for this answer in the passage itself? Doth not he there condemn Toleration generally? Doth not an universal indefinite proposition include all manner of Toleration, whether general or special? If he had meant it in this restrained sense, he should then have expressed himself, that he that defends Toleration, except such toleration as is allowed by law, is a False Brother; but not doing so, but expressing it generally, it is plain, that he has condemned that Toleration that is granted by law: And it is submitted to your lordships, that this is a plain proof against him of this Article.

The next passage is that relating to the perfidiousness of archbishop Grindall, in deluding queen Elizabeth to the Toleration of the Genevian discipline: The Doctor, in his Answer, did conceive he had good authority from history to make out that assertion; but whether he had or no, he did apprehend that such assertion was no proof of his maintaining or suggesting that the present legal Toleration was unreasonable, or the allowance of it unwarrantable.

I did, in making out the charge, agree with the Doctor, that whether he was, or was not mistaken in that fact, was not the material point in question; but that he had put it on the right question, whether that assertion (true or false) relating to archbishop Grindall, was a condemnation of the Toleration now granted by law? To that I principally applied myself, to shew that that fact, as stated by the Doctor, was a censure of the Toleration; not forgetting, at the same time, to say something in vindication of the memory of that great prelate.

But now, the Doctor's counsel (in their Defence) have in a great measure quitted the true point that the Doctor rightly put it upon in his Answer, and instead of endeavouring to shew that this is no reflection on the Toleration, have rather endeavoured to shew, that this fact of the archbishop is true; that the reason of his disgrace was, for deluding the queen to the Toleration of the Genevian discipline, and for giving up the discipline of the Church: That at that time, there was no law to indulge any separation from the Church; and therefore for the head of the Church, under the queen, to give up the discipline of the Church, was an high crime in him; and though it be a harsh term, yet it was true to call him a perfidious prelate, and false son of the Church.

For this end, they did produce and read two letters; the one from queen Elizabeth to the bishops throughout England, for suppressing the exercise called prophesying, and the other of the archbishop to the council; and out of these two, they say, there is proof out of the archbishop's own mouth, that the reason why he was under a suspension, was for deluding her majesty to permit a Toleration of the Genevian discipline; and that he acknowledged the justice of his punishment for that crime. And they further aggravate it, that it would be an invidious reflection on the character of that glorious queen, that she should cause an archbishop to be suspended, for prosecuting Julio the Italian for having two wives, or for not giving up the palace at Lambeth to the earl of Leicester: As if I had insinuated, or could have imagined, that the apparent visible reason of the disgrace of the archbishop, were these things! No; it cannot be thought I meant so. The apparent visible cause of Grindall's disgrace was, no doubt, the encouraging of the

exercise called prophesying; and queen Elizabeth knew no other: But yet the real spring, the secret history, and true reason, was the artifice of the earl of Leicester, who had the greatest power and credit at that time with the queen. The good archbishop had, by his prosecution of Julio the Italian physician, and by his refusal to alienate Lambeth, offended this great earl, who thereupon meditates revenge against him: And knowing the archbishop to be a great favourer and promoter of the exercises called prophesyings, which were far from being conventicles, or parts of the Genevian discipline; he misrepresents these to the queen, and by those means incensed the queen, and the queen was angry with the archbishop, only upon account of these prophesyings. But these misrepresentations, that incensed the queen, had not been, if the archbishop had not first incensed Leicester in the forementioned two particulars. To make this out to be the fact, I desire your lordships' patience, whilst I refer to one or two histories of good credit. Fuller, in the 9th book of his Ecclesiastical History, p. 130. after he hath recited a long letter of Grindall's to the queen about this matter, thus concludes: "Alas! all in vain: Leicester had so filled her majesty's ears with complaints against him, there was no room to receive his petition. Indeed Leicester cast a covetous eye on Lambeth-House, alleging as good arguments for his obtaining thereof, as ever were urged by Ahab for Naboth's vineyard. Now Grindall, though generally condemned for remissness in this kind, (parting with more from his see, than ever his successors thanked him for) stoutly opposed the alienating of this his principal palace, and made the Leicestrian party to malice him."

This is as express an account as can be, that this was one of the secret springs of that prosecution: and as for the other, that he carried on the prosecution against Julio, that is taken notice of by the same author, in page 163, and by Camden, in his History of queen Elizabeth, and other authors: so that the true secret reason of Grindall's disgrace, was not for tolerating the Genevian discipline. And indeed it would be a paradox, that the earl of Leicester, who was the great patron and support of the Puritans, should run down this archbishop for encouraging of Puritanism. Can that be thought? No: it shews plainly, that there was some other reason. And it is no reflection on queen Elizabeth, that she was deceived by the misrepresentation of a person on whom she entirely relied. Princes are not exempt from the common frailties of human nature, and may be imposed on by those whom they most trust.

But, my lords, without considering the latent causes of his disgrace, let us consider the visible cause, which was known only to queen Elizabeth. Do the letters (which they have produced) prove, that the archbishop suffered for deluding the queen to the toleration of the Genevian discipline? It appears thereby, that queen Elizabeth was displeased at those exercises called prophesyings, which the archbishop encouraged and favoured; but it is a great mistake to think, that those prophesyings were conventicles, or assemblies of Puritans: they were really meetings of the parochial clergy of the Church of England, (which since have been called conferences,) to improve one another in the expounding of the Scriptures. The manner of these prophesyings was this: the minister within each arch-deaconry, or some other precinct, met on some week-day, in the most noted place in that precinct; some ancient grave minister, appointed by the bishop, did preside: then every minister successively (the youngest still beginning) did handle some texts of Scripture, shewing the sense of the place, the propriety of the words, the diversity of interpretation, the virtues enjoined, and the vices prohibited. No layman was ever suffered to speak, nor any clergyman unless first licensed by the bishop. This was that which they called prophesying, and continued about two hours; and then the conclusion was with a prayer for the queen and all estates, as is appointed by the book of common-prayer, and a psalm. Now can any one think, this was an encouragement of the Genevian discipline?

The parochial clergy met by consent of the bishop, and discoursed about the meaning of some text of Scripture, and closed with a prayer, as is appointed in the common-prayer book, and with a psalm: and can this be said to be encouraging the Genevian discipline? Can this be called the holding of conventicles; or receding from the discipline of the Church? Nothing like it: though, if it were, it appears by the letters, that he did not delude the queen to encourage the Genevian discipline. No; if this was the Genevian discipline, the queen would not be deluded by him; and because he would not obey the queen in suppressing these prophesyings, this was the apparent cause of his disgrace.

As to the letter, because it is said the archbishop owns his crime; how does he do it? "I cannot deny," says he, "but that I have been commanded, both by the queen's majesty herself, and also by divers of your honourable lordships in her name, to suppress all those exercises within my province, that are commonly called prophesyings." He did not deny the queen had given him that command, or that he did not comply with it: "But," saith he, "I do protest before God, the Judge of all hearts, that I did not of any stubbornness or wilfulness refuse to accomplish the same, but only upon conscience:" and goes on and shews the reasons on which that conscience was founded. He denied it not out of stubbornness or disobedience, but out of a persuasion of conscience, because he found it profitable and useful to the Church. Well, how did he behave himself under this? "And whereas," says he, "I have sustained the restraint of my liberty, and sequestration of my jurisdiction, now by the space of six months; I am so far from re-

pining thereat, or thinking myself injuriously or hardly dealt withal therein at her majesty's hands, that I do thankfully embrace, and frankly, with all humility, acknowledge her princely, gracious, and rare clemency toward me; who having authority and power to have used greater and sharper severity against me, and for good policy and example thinking it so expedient, hath notwithstanding dealt so mercifully, mildly and gently with me."

What language more becoming a grave prelate could be used? He patiently submits to her majesty's authority, neither murmuring, nor obstinate: but there being a superior obligation of conscience, which it was not in the power of any man to dispense with, he thinks himself obliged, as a true example to all clergymen and others, to submit to the dictates of his conscience; but still with patience, calmness and obedience.

Is there any thing in this, that looks like giving up the interests of the Church? Not only this good archbishop, but several others of the best bishops of those times, had those exercises in their dioceses, and concurred with him in the encouragement of them. And can it be thought, that those bishops who were exiles in queen Mary's time, and were afterwards the happy and glorious instruments, under God, in settling the Liturgy and the Articles of the Church, were for giving up the establishment of the Church, by introducing that which is now insinuated to be the Genevian discipline? But those bishops then thought, it was a likely way to make an honest, learned, and laborious clergy. Is there any thing in this, to occasion the calling him a perfidious prelate? A perfidious man is he that violates his conscience, to obtain a temporal end; but he chose to lose the queen's favour, rather than part with a good conscience.

I never found, that archbishop Grindall was ever spoke hardly of by any English divine of credit, till the time of archbishop Laud; and then, to extol archbishop Laud for an active, zealous prelate, it became the fashion to run down his predecessor, Abbot, as a remiss man, to court the present archbishop, by detracting from the memory of the last. And, to carry on the compliment, a parallel was made between archbishop Grindall and his successor Whitgift. I only mention this, to shew that for a long time the memory of that good archbishop was had in esteem; and he was always looked upon as a principal father of the Reformation of the Church, before this time.

But, my lords, it is now time to come to the main point; and that is, whether or no the Doctor's representation of archbishop Grindall, as a false son of the Church, and a perfidious prelate, for doing what he lays to his charge? and, whether his commendation of queen Elizabeth, for the resolution she took to suppress the Dissenters, and for her prudence in exercising wholesome severities on them, whereby the crown sat easy on her head, be a censure or condemnation of the present Toleration?

As to this, the counsel for the Doctor first say, That in queen Elizabeth's time, schism was in its infancy; the number of Dissenters were but few, and therefore the exercising of severities at that time was wholesome, because it might have crushed them in their beginning, and prevented the growing encroachments of those persons: but at the time when the Act of Toleration was made, the Dissenters were increased, and were possessors of great property, and it was reasonable to grant them a toleration; for it might be a disturbance to the state, to exercise those severities upon them, which might have been safely done in the time of queen Elizabeth, when schism was in its infancy, and their numbers few; and hence they infer, that what was spoken of the Toleration then, cannot be applied to the Toleration now.

My lords, supposing the fact to be true, then it follows, that the justice and reasonableness of the present Toleration depends only on the strength and number of the Dissenters: when they are strong and numerous, then they are to be tolerated and permitted; but when their numbers decrease, and it shall be alleged that they are but few, then they are to be crushed, and the 'wholesome severities' are to be renewed upon them again; notwithstanding the preamble of the Bill to prevent Occasional Conformity, which says, "That persecution for conscience only, is directly contrary to the profession of the Christian religion, and particularly to the doctrine of the Church of England, and that the Act of Toleration ought to be inviolably preserved." If it ought to be inviolably preserved, then, whether the Dissenters in England be more or less, they ought to be tolerated.

This brings to my mind the memorable edict that was published by the French king for reversing the edict of Nants, in October, 1685, the preamble of which edict recites, "That by reason of the great troubles and wars occasioned by those of the reformed religion, his grandfather Henry the 4th, had given them liberty by the edict of Nants, retaining notwithstanding a design of bringing all back again to the Romish Church; and his father and himself had had all along the same design; and that in his time the best and greatest part of the Protestants were converted to the Catholic faith, and that by reason thereof the execution of that edict was become of no use; and therefore, entirely to wipe out the memory of those troubles and confusions which the Protestants had occasioned, he thereby revoked that edict."

May it not be said in this case, that in queen Elizabeth's time, because the number of Dissenters were few, therefore those severities were good; and that when the Toleration Act was made, there were greater numbers, and therefore those severities were then fit to be taken away; but now the Dissenters are but few again, therefore it may be fit to return to those severities again.

Another answer that hath been given, is,

That in queen Elizabeth's time there was no toleration established by law, and all the Doctor aimed at, was to excite the magistrates to put the laws in execution against such offenders as are not exempted by the Toleration Act. But I submit to your lordships, whether the words are capable of that interpretation. Here is a commendation of the piety and zeal of queen Elizabeth, who resolved entirely to suppress the Dissenters, and she in her prudence put those wholesome severities in execution. What those wholesome severities were, your lordships have been told; they were hanging, burning, abjuration, confiscation, imprisonment, loss of estate, liberty and life: I say no more of them; but I believe there is not one person here, but if these severities were to be inflicted on him, would be far from thinking them wholesome, and desire to be excused from them. I would not be thought in any thing to reflect on the memory of that glorious queen, who was so eminent an instrument of God, to deliver this kingdom from Popery, from the power of Spain, and to settle the Protestant religion among us; but it must be confessed, there were these spots and blemishes in her reign, permitted by God's providence for wise ends and purposes; and this should raise our gratitude to Almighty God, and our thanks to her present majesty, whose reign hath exceeded her predecessor's queen Elizabeth, without being chequered with any of those spots or stains. And as queen Elizabeth preserved this kingdom from the monarchy of Spain, so her majesty has preserved us from the united power of France and Spain, been the terror of her enemies abroad, whilst at the same time she has, with universal clemency and justice, cherished and protected all her subjects at home; and as by these means, she has engaged in the strongest affection the hearts of all her people, so no doubt they will always continue to retain the strictest duty to a queen, who hath been so universally good to all her subjects.

The last part of the Charge is, that the Doctor asserts it is the duty of superior pastors to thunder out their ecclesiastical anathemas against persons entitled to the benefit of the Toleration; and insolently dares or defies any power on earth to reverse such sentences. One of the counsel said, that the thundering out those anathemas, is no more than declaring the judgments of God denounced in Scripture against the wickedness of men; and that he desires the superior pastors to denounce them, because the greater the authority of the person denouncing them is, the greater influence they will have on the minds of the people. But the anathemas he excites them to, are ecclesiastical anathemas, which are plainly ecclesiastical censures and excommunications; it is a plain exciting the superior pastors to denounce excommunications and other ecclesiastical censures. It is said, that this expression is tied up only to those anathemas and sentences that are ratified in heaven, and those, they say, no power on earth can reverse. I shall not enter into that question, whether this is a proposition strictly just in divinity: all I shall say as to that, is this, that all who have wrote the highest of the power of the keys, allow and maintain that there is a double power, a power of remitting as well as retaining, of loosing as well as of binding, of opening as well as of shutting, both exercised by the Church on earth. If the superior pastor has for good cause bound or shut any person out of the Church, that sentence is ratified in heaven; but yet notwithstanding, if that person, so censured, reforms and amends, and the Church on earth restore him again, the first sentence, though ratified in heaven, is vacated and done away by the Church's power on earth.

But this is not the matter now before your lordships; the question is, whether he excites the superior pastors of the Church to thunder out their anathemas against persons that are entitled to the Toleration; and I think, that he does so, is owned by his counsel; for they say, that schism doth expose a man to the censures of the Church; that the Dissenters were schismatics before the Act of Toleration, and that that Act does not excuse the schism; and therefore remaining schismatics still, they are still liable to the censures of the Church: now I do agree with the Doctor, that the Act of Toleration hath made no alteration as to the sin of schism; if the Dissenters were schismatics before the Toleration, they are schismatics still; and taking that for granted, then here is the force of the Doctor's argument: the Dissenters were schismatics before the Act of Toleration; as they were schismatics before, so they are schismatics still; it is the duty of all superior pastors to thunder out their anathemas against schismatics; when they thunder out those anathemas, they are ratified in heaven; whatever is ratified in heaven, no power on earth can reverse; therefore, though the Dissenters be exempted from human penalties by the Toleration-Act, and are thereby preserved in the free exercise of their religion and consciences; yet notwithstanding that, let the superior pastors do their duty, and thunder out their anathemas against them, and let any power on earth reverse those anathemas if they can. Now can there be a more plain, positive and direct proof of this part of the Article, than this is? Can any thing be a clearer evidence to prove this last part of the Charge against him, that he suggests and maintains, that it is the duty of superior pastors to thunder out their ecclesiastical anathemas against persons entitled to the benefit of the Toleration-Act, and that he insolently dares or defies any power on earth to reverse such sentences?

My lords, this is what I have to offer by way of reply: there is a gentleman to come after me, who will amply supply what I have omitted, and therefore I shall not trouble your lordships any further.

[Then the Lords adjourned to their House above.]

Tenth Day.

Friday, March 10.

The Lords coming down into Westminster-hall, and being seated in the manner before-mentioned, proclamation was made by the serjeant at arms as follows:

Our sovereign lady the queen doth strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

Then another proclamation was made: Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy bail, else thou forfeitest thy recognizance.

The Doctor appearing at the bar accordingly, with his counsel as before:

Lord Chancellor. Gentlemen, you that are Managers for the House of Commons may proceed in your Reply.

Mr. *Cooper.* My lords, when by command of the Commons, I spoke to your lordships a few days since, in maintenance of the second Article, towards the conclusion of what I then said, I presented to your lordships a short view of what I apprehended we might reasonably expect would be the consequence of the Doctor's bitter invectives against the Act of Toleration, and the persons intended to be protected by it. I likewise took notice of those heats and disputes, of the feuds and animosities, which were then apparently stirred up throughout the kingdom.

I am sorry to have so early an occasion to say, that my apprehensions in this particular were so well grounded: your lordships have seen, that this seditious libel, under the specious title of a Sermon, calculated to seduce and delude the rabble, has, even during the continuance of the Trial, produced an actual rebellion; in which several places of religious worship (appointed for those persons, who are by law tolerated and allowed, but have the misfortune nevertheless to be represented by Dr. Sacheverell as necessary to be destroyed) have been accordingly pulled down, and burnt, in defiance of the supreme power of the kingdom; and this, my lords, at the instigation of one who would be thought an advocate for Passive Obedience.

I could wish the prisoner's indiscreet behaviour (which seems to have abused the liberty with which your lordships have indulged him) may not unhappily have given some occasion to the outrage and violence of late committed, notwithstanding the apology he has made in this particular.

Sure I am, that discord, which flames in the kingdom, was unheard-of among us, until the Toleration was thus publicly and seditiously branded; until Dr. Sacheverell had presumed to represent it to the people, it is impossible to say how! without referring to his whole libel.

His counsel have observed, that the second Article contains several charges, and have insisted that the passages given in evidence by the Commons, are not sufficient to maintain the first and second; and as to the third and fourth, they seem rather to justify than deny those branches of the charge.

My lords, the Commons apprehend, notwithstanding what has been said, first,

That Dr. Sacheverell has plainly suggested and maintained, that the Toleration granted to Dissenters is unreasonable, and the allowance of it unwarrantable.

This, my lords, we insist he has done, not in ambiguous or doubtful words, not in uncertain expressions, but in direct and positive assertions.

The counsel admit, that to speak against a law in being cannot be justified. The Act of Toleration is not only a law in being, but is a law which has visibly attained the end for which it was made; that is to say, by giving ease to scrupulous consciences in the exercise of religion, it has proved an effectual means to unite her majesty's Protestant subjects in interest and affection.

Yet, my lords, this law, which, by the experience of more than 20 years has been found so useful and necessary, hath been traduced and arraigned by the prisoner, both from the pulpit, and the press, with a malicious and seditious purpose, to destroy the public peace and security of the kingdom.

This offence, it seems, is of too high a nature to be justified by the prisoner and his counsel, and therefore it is thought more expedient to deny it. The turn that is given is this; say they, Dr. Sacheverell affirms nothing touching legal Indulgence or Toleration, but all that he has said respects only universal Toleration.

My lords, I thought I had obviated this excuse, by observing that this notion of universal Toleration has been conceived and brought forth since the Impeachment.

However, I am willing to enter into the question: whether the Toleration mentioned in the libel, is intended or can be understood of universal Toleration.

Fol. 34. Your lordships will find these words: "Nay, how they have advanced themselves, from the religious liberty our gracious sovereign has indulged them, to claim a civil right, as they term it, and to justle the Church out of her establishment, by hoisting their Toleration into its place." (Vide Sermon.)

My lords, will any man deviate so far from sense, as to say, that the Doctor here meant universal Toleration, in the sense the Doctor and his counsel have defined it? Is universal Toleration a religious liberty, with which our gracious sovereign hath indulged her subjects? Nay, my lords, have not every one of them argued, and that rightly, that the Doctor's universal Toleration is not tolerated by law? That Atheists, Deists, Tritheists, Socinianists, and those who go to no religious place of worship, are not exempted from the former penal-

ties? How then is it possible the Doctor should be understood, as speaking of universal Toleration in this passage? Is not this directly and positively affirmed of the Toleration, with which the Dissenters are indulged by our gracious sovereign? Can your lordships conceive the Dissenters are not the persons intended, when he says, they claim a civil right, as they term it, to justle the Church out of her establishment, by hoisting their Toleration into its place?

Again, folio 25. "They thrive upon concessions, take permission for power, and advance toleration into an establishment."—Pray, my lords, what concessions have been made to persons not within the benefit of the Act of Toleration? What permission is it they can be said to take for power? What toleration have they to advance into an establishment?

My lords, folio 14, and in many other places, your lordships cannot but see that all the Doctor's spleen is levelled at the legal indulgence or toleration. But it is misspending your time, to prove what it is impossible not to know and be convinced of, upon reading every passage in the libel where toleration is but so much as mentioned.

The next thing they urge in the Doctor's Defence is, that if his expressions do relate to the legal indulgence or toleration, they are dubious and uncertain, that nothing can be inferred from them without innuendoes and forced constructions.

My lords, now the question is, whether Dr. Sacheverell's expressions relating to the Toleration, and the persons indulged, are dubious and uncertain? Whether any innuendo or forced construction is necessary to demonstrate the malignity?

Your lordships will be pleased to remember, that the counsel from the first to the last, maintained very strenuously (as did the Doctor likewise in his speech,) that although the Act of Toleration exempts the Dissenters from penalties, yet they remain schismatics notwithstanding; for, say they, dissension was a schism before the statute, and a bare exemption from a penalty has not altered the case, but the same remains schism still; and this position, I find, is agreeable to the Doctor's opinion as delivered in his Sermon, with this addition only, that all schism and separation is damnable sin, without making any allowance for ignorance or prejudice of education.

His words are these, folio 8. "Is this the spirit and doctrine of our holy mother? To assert separation from her communion to be no schism; or if it is, that schism is no damnable sin?"

My lords, when I observed in this and other passages what spirit this man is of, I wonder not to find, that the most Christian virtues of charity and moderation are mentioned by him with slight and contempt. Folio 25, you will find him citing a passage from St. Paul's epistle to the Galatians, chap. 2, after which he adds these words. "If our Dissenters, says he, had lived in those times, they would have branded him (i. e. St. Paul) for an intemperate, hot, furious zealot, that wanted to be sweetened by the gentle spirit of charity and moderation, forsooth!" My lords, if our Dissenters had lived in those days, they would have been highly to blame, if they had branded the Apostle with those opprobrious names; whoever peruses that chapter, will find that there is not the least occasion for it. But Dr. Sacheverell would willingly have St. Paul thought like himself.

My lords, I cannot take upon me to say what the Dissenters would have said, had they lived in St. Paul's days: But for my own part, I cannot forbear saying now, that since it appears to be the Doctor's opinion that all separatists are schismatics, and that all schismatics are damned, I cannot but think that Dr. Sacheverell wants to be sweetened by that ridiculed spirit of charity and moderation. I own, my lords, I was amazed to hear this gentleman in his speech affirm, that he had not betrayed any want of Christian moderation in his Sermon: I wish he has not been unmindful even of Christianity itself; when it is so apparent that in this short sentence, and in the passage (folio 24,) which I formerly cited at large, he has sentenced to eternal damnation, not only the Dissenters of whatsoever denomination, but those also who defend the Toleration.

It is to be hoped, some things which he has vowed and said for himself in his Defence, may have more of truth in them than this has.

But, my lords, to return: The Doctor and his counsel are agreed that all Dissenters are schismatics; consequently when he speaks of schism and schismatics, he must mean the Dissenters; and then be pleased, my lords, to judge if the Doctor's expressions touching the Toleration, and the Dissenters, can be said to be dubious; on the contrary, whether they are not plain, positive and certain.

Before I enter into this matter, I cannot but take notice again of that remarkable passage, (folio 16 and 17.) "What could not be gained by Toleration, must be brought about by Occasional Conformity; that is, what they could not do by open violence, they will not fail by secret treachery to accomplish. If the Church cannot be pulled down, it may be blown up; and no matter with these men how it is destroyed, so it is destroyed." My lords, is not here a direct assertion that the Toleration is downright open violence, and Occasional Conformity secret treachery? Is not here an assertion, that although the Toleration has not been able to answer the end for which it was designed, i. e. to pull down the Church, yet Occasional Conformity may blow it up? Pray, my lords, what construction can these words admit of, "No matter with these men how it is destroyed, so it is destroyed?" What men are here intended? Even Dissenters and Occasional Conformists.

Is this passage doubtful and ambiguous? Is here any occasion for a forced construction, or

an innuendo? My lords, it is most scandalously plain, and as plainly seditious.

Your lordships have observed, that neither the Doctor nor any of his counsel, (one only excepted) have taken the least notice in his Answer, of this passage: It was produced and given in evidence against him, and twice at least mentioned by the managers. I wonder the author would not vouchsafe to explain it. Is not this silence a confession of his guilt?

The counsel that did mention it, was pleased to say, that it rather commended the Toleration than found fault with it; as if it was some credit to the Toleration, which was intended to pull down and destroy the Church, that it had not done it. In what humour, my lords, that Answer was made, to so high and criminal a charge, I know not; the Commons might reasonably have expected a more serious answer. But, my lords, from hence we conclude that no Answer can be given to it.

Again (folio 10,) the Doctor affirms, "That whoever presumes to alter or innovate any point in the articles of the faith of our Church, ought to be arraigned as a traitor to the state; heterodoxy in the doctrines of the one, naturally producing, and almost necessarily inferring rebellion and high-treason in the other, and consequently a crime that concerns as much the civil magistrate to punish and restrain, as the ecclesiastical." Then he goes on, and adds, "This assertion, at first view, may look like an high-flown paradox."—I own, at first view it looked to me something like it, and I am not yet convinced but it is so.

Are not the Dissenters heterodox in opinion? Consequently they are rebels and traitors, according to Dr. Sacheverell, and ought to be punished by the civil magistrate as such: That is to say, they are to be hanged as rebels, and damned as Dissenters.

Still, my lords, we have the Doctor's word for it, he has not betrayed the least want of Christian charity or moderation.

Many are the paragraphs in this libel equally obnoxious, and which, like these, are too plain to admit of any answer.

My lords, I shall not lose time as to the second head, or charge, in this Article. Folio 8, you will find it asserted, as plain as words can speak, that to defend toleration is the mark or characteristic of a False Brother; and (folio 24,) you will find his portion assigned him, with all the rest of the False Brethren, "with hypocrites and unbelievers, with all liars in the lake which burns with fire and brimstone, with the grand father of falshood, the devil and his angels."

My lords, the charge which relates to the archbishop Grindall is, "That Doctor Sacheverell asserts, queen Elizabeth was deluded by him to the toleration of the Genevian discipline; and that, to shew his resentment against the archbishop for favouring toleration, he calls him a false son of the Church, and a perfidious prelate."

The Doctor, throughout his Sermon, is arguing with a furious and intemperate zeal against the present Toleration; he is representing it as a law that gives encouragement and protection to schismatical impostors, enthusiasts, hypocrites, to a mungrel union of sects, to Fanatics, Rebels, Traitors, Atheists, Deists, Tritheists, Socinianists, to the principles of lunaticism, regicide, and anarchy, to monsters and vipers, that scatter their pestilence at noonday, to Jews, Quakers, and Mahometans; in a word, to all False Brethren; and after a great deal more of this unprecedented language he breaks out, (folio 19,) "These charges are so flagrant and undeniable, that a man must be very weak, or something worse, that thinks or pretends the Dissenters are to be gained, or won over, by any other grants or indulgence, than giving up our whole constitution."

"Have they not," says he, "ever since their unhappy plantation in this kingdom, by the intercession of that false son of the Church, bishop Grindall, always improved, and rise upon their demands in the permission of the government?"

My lords, I would fain know whether Doctor Sacheverell, by these words, "A man must be weak, or worse, that thinks the Dissenters are to be won by any other indulgence than giving up our whole constitution," could mean any other than the present Dissenters, and that indulgence which is at present afforded them.

In the very line following he calls them "clamorous, insatiable, and church-devouring malignants;" and then proceeds in the words I have mentioned: "Have they not," (*i. e.* the Dissenters) "ever since their unhappy plantation in this kingdom, by the intercession of that false son of the Church, archbishop Grindall, improved and risen upon their demands in the permission of the government?"

The prisoner's Defence has explained this passage; they were barely permitted or sufferred, he says, for a time by queen Elizabeth, but they have improved and risen upon demands, till in this age they have obtained an indulgence by act of parliament, and this act of parliament is manifestly what the Doctor has taken offence at.

Then he goes on——"In so much," says he, "that queen Elizabeth, who was deluded by that perfidious prelate to the toleration of the Genevian discipline, found it such an headstrong, encroaching monster, that in eight years she found it would endanger the monarchy, as well as the hierarchy: and, like a queen of true resolution, and pious zeal for both, pronounced them factious, and suppressed them by wholesome severities."

My lords, I think we should have been wanting in that duty we owe to the memory of that great prelate and father of the Church, who was so considerable in establishing the reformed religion, had we not taken notice of these harsh and unjustifiable expressions.

Doctor Sacheverell speaks of them as carrying an undue asperity, but such as he hopes

may be forgiven, since it was necessary, he pretends, that either queen Elizabeth, or that archbishop, must bear the blame; and he rather thought it reasonable to charge it on the archbishop, than to suffer it to lie at the queen's door.

My lords, your lordships will observe, that all the answer he has given to this part of the charge, is, as if the Commons had impeached him for being too free with archbishop Grindall, for using, as he calls it, an undue asperity of expression towards him.

But your lordships will discern that this passage is made use of in our charge, to shew that the Dissenters are represented as head-strong and encroaching monsters, dangerous to the monarchy, as well as the hierarchy; and the example of queen Elizabeth is produced, to shew how necessary it is by wholesome severities to suppress them.

Are any strained constructions or innuendoes necessary to apply this evidence to the first and main head of the charge, which is, That Doctor Sacheverell asserts and maintains, "That the Toleration is unreasonable, and the allowance of it unwarrantable?"

My lords, before I take my leave of this head, I cannot forbear saying upon this occasion, that sure I am the Toleration is not so dangerous to the monarch, as is this late notion of an hierarchy to the supremacy of the queen's majesty; which however I hope shall be continued and preserved in the crown of England, for the peace and safety of the Church, as by law established, to all posterity.

My lords, to the next and last part, which relates to the thundering out ecclesiastical anathemas, the Defence is, that those anathemas are not intended against the persons intitled to the Toleration.

To this I answer: he is particularly speaking, in this part of the libel, of the schismatics and Dissenters, and expressly names them in these words, (fol. 25.)

"And yet if our Dissenters had lived in those times, they would have branded him as an intemperate, hot and furious zealot.——Schism and faction are things of impudent and encroaching natures, they thrive upon concessions, take permission for power, and advance a toleration immediately into an establishment."—Are not the Dissenters here expressly named? Are we not to understand the words Schism and Faction, as coupled with Toleration, to be meant of the Dissenters, and of them only? Sure this is too plain to admit of any doubt.

Then, my lords, he proceeds: "And are therefore to be treated like growing mischiefs, or infectious plagues, kept at a distance, lest their deadly contagion spread. Let us therefore have no fellowship with these works of darkness, but rather reprove them: let our superior pastors do their duty, in thundering out their ecclesiastical anathemas, and let any power on earth dare reverse a sentence ratified in heaven."

My lords, is here one word of heresies, blasphemies, and the rest of those enormous offences, to which the Doctor would have these anathemas relate? No; there is nothing to be found here but Dissenters, schism, and toleration.

If these anathemas are to be understood (as certainly they are) to extend to persons entitled to toleration; then, my lords, that air of insolence that concludes the period is explained.

"Let our superior pastors do their duty; that is to say, let them exert themselves, and thunder out their anathemas, and let any power on earth dare reverse them."

These words, my lords, seem too big and mighty, to mean little or subordinate power.

Thus have we supported, and made good the several charges contained in the second Article.

My lords, as the Commons are fully sensible how necessary it is to support the honour and justice of the Revolution, to which we owe no less than the inestimable blessing of her present majesty, the guardian angel of this Church and State, the future expectation of a Protestant Succession, the religion, laws, rights, and liberties of the British nation; so are they thoroughly convinced that the peace and welfare, the security and strength of the kingdom in great measure depend upon the inviolable preservation of the Act of Toleration, which has been most maliciously and seditiously traduced and misrepresented by Doctor Sacheverell.

Mr. Thompson. My lords, it is my part to trouble your lordships with a reply to such answers as have been offered to the third Article of this Impeachment; and notwithstanding what has been said by the counsel, what has been produced in evidence, and what has been alleged by the Doctor himself to move your lordships' compassion; I am concerned even for his sake, that I can observe it to your lordships, that the charge in this Article remains entirely unanswered.

Before I enter into the particulars, I must observe to your lordships, that if there were any doubtful, or any the least favourable construction to be made of some passages in this Sermon, the Commons would not have given your lordships this trouble, nor the Doctor an opportunity of censuring their impeachment as a hard-hearted and uncharitable prosecution.

My lords, I cannot but think it very ungenerous to insult any man in misfortunes, or to treat one in his condition with scorn and indignity: neither have I or shall I be guilty of it; but I must take leave to say, that no other interpretation can be made of some passages applicable to this head, but what is criminal, since so many learned counsel, since so many able heads who have assisted the Doctor in his Defence? nay, since he himself, who should know best his own meaning, has not been capable of giving the least colour or pretence of any construction of them in his favour.

Whatever pity your lordships may be inclined to in your private capacities, for any one who has (I cannot say through inadvertency) brought himself into affliction, whatever dispositions you may have to mercy, yet I need not say, that there is a compassion, a tender regard due to the welfare of your country, a care incumbent on you to suppress what has the least tendency to sedition, and the disturbance of the public peace of the kingdom, and that these important trusts have a claim to your lordships' justice, preferable to any private concern whatsoever.

Not to detain your lordships any longer in generals, I shall proceed to state the charge and defence, that your lordships may have a view of the insufficiency of the latter. My lords, the charge is, "That the Doctor suggests and maintains, that the Church of England is in a condition of great peril and adversity under her majesty's administration:" He denies that he suggests any danger to the Church, only from vice, infidelity, blasphemy and heresy, but not at all from or under any part of her majesty's administration.

The first passage I produced to your lordships, to prove the charge, was in page the 5th; I must beg leave to trouble your lordships with reading it again, because it may be necessary: "Though it were very obvious to draw a parallel here betwixt the sad circumstances of the Church of Corinth formerly, and the Church of England at present, wherein our holy communion has been rent and divided by factious and schismatical impostors; her pure doctrine has been corrupted and defiled, her primitive worship and discipline profaned and abused, her sacred orders denied and vilified, her priests and professors (like St. Paul) calumniated, misrepresented and ridiculed, her altars and sacraments prostituted to Hypocrites, Deists, Socinians and Atheists; and this done, I wish I could not say without discouragement, I am sure with impunity, not only by our professed enemies, but, which is worse, by our pretended friends and False Brethren."

The learned counsel pretended to shew, that most of these calamities attending the Church, proceeded from the blasphemous and heretical books and pamphlets produced to your lordships, and that the Doctor meant them to be the cause of the danger he suggests: Now, pray, my lords, how can that construction be made? How can this be consistent with the Doctor's assertion, that all this is done, not only by professed enemies (which every body will agree takes in the infidels, blasphemers and heretics) but by pretended friends and False Brethren? When I took the liberty to observe on this passage, I stated it thus: Who could prostitute altars and sacraments to Hypocrites, Deists, Socinians, and Atheists, but some of the Doctor's own order? And who were to punish those crimes? Who could they be that did not discourage them, but suffered them to be committed with impunity, but his ecclesiastical superiors? And that they were part of her majesty's administration, nobody could deny.

Now what answer, my lords, was given to this? To the first part of this paragraph, about rending the communion by schismatical impostors, and so to the other particulars, till the last, it was shifted off to the professed enemies, the infidels, blasphemers and heretics, dissenting teachers, and Popish priests, but nothing laid to the False Brethren, who, the Doctor says, neither punish nor discourage. But when the learned counsel came to the last calamity of the Church, that of prostituting the altars and sacraments, &c. they are pleased to make occasional conformists their Atheists, &c. that receive the sacraments; but as to the charge of arraigning the persons that do not discourage or punish those who prostitute altars to Atheists, &c. they thought fit to slide it over, and not say one syllable to it; they did not so much as mumble this thistle, and the others but very tenderly. Pray, my lords, in the interpretation I make, where is there any foreign intendment, any forced construction, or strained inference against the Doctor's expressed words, and positive assertions? Let every candid reader, without prejudice, impartially consider the meaning of this passage: Is this a danger suggested from books or pamphlets? Or is it not a plain and direct invective against those persons in the Church, who are charged with being the occasion of these dangers to the Church by their remissness in their duty, not only in not punishing, but not so much as discouraging those crimes? And to whom can his lazy defenders within relate, but to the same persons, those that are within the Church, and to protect it?

But if it were true, that altars and sacraments were thus prostituted, why must the world be told in this manner of it? Though it is the duty of a clergyman at all seasons, and in all places, as one of the Doctor's counsel was pleased to say, to preach against vice and infidelity, immorality and profaneness; yet sure none will say, that he is to revile his superiors, and charge them in this method with their want of duty, and care for the Church: what other end must such licentious reproaches produce, but a contempt of their persons, a lessening the dignity of their order, and a diminution of that character which gives them the capacity of doing good in the world whilst they preserve a veneration and esteem, but which must cease when they meet with the contrary? The Doctor was so sensible of this, when he mentioned it as his own case, that he thought the very imputation of a crime to any of his function, though acquitted of it, must leave a scar so as to blemish his character; sure then he ought to have used the utmost caution, before he preached or published this Sermon, and to have considered the pernicious consequences of reviling those in authority. If, as he was pleased to say, ill treating of him, who was an ambassador of Christ, was despising Christ himself; sure it cannot be thought an unnatural infe-

former, if her majesty is said to be reviled, by reflecting on those who act under her commission, and are part of her administration.

The second passage I troubled your lordships with, is in page 16; he had been talking of the comprehension and union of the Church and Dissenters, and giving a great many hard names to it; which design your lordships know had its rise from a commission under the great seal from his late majesty to several lords, bishops, and other learned divines, who were to consider of proper methods to accomplish it: "but he thanks God, that providence had blasted the long projected scheme of these ecclesiastical Achitophels;" with other scurrilous reflections on the design, and those concerned in it; and then he says, "That since this model of universal liberty and coalition failed, and these False Brethren could not carry the Conventicle into the Church, they are now resolved to bring the Church into the Conventicle, which will more plausibly and slily effect her ruin; what could not be gained by comprehension and toleration, must be brought about by moderation and occasional conformity; that is, what they could not do by open violence, they will not fail by secret treachery to accomplish. If the Church cannot be pulled down, it may be blown up; and no matter with these men how it is destroyed, so that it is destroyed."

Now pray, my lords, where is the forced construction to make the Doctor in this passage speak of persons in Church and State who endanger the Church, and not of books and pamphlets, vice, infidelity, &c.?

He is on his second general head of the perils of False Brethren in the Church and State, and of those persons who could not accomplish the destruction of the Church by the comprehension, but were doing it another way, by occasional conformity and moderation; I do not know that either of these are condemned by the law for vice, infidelity, blasphemy, heresy or profaneness; be that as it will, it is from the persons in Church and State the danger is suggested to arise, and who, as he is pleased to say, make use of these only as means to blow up and destroy the Church: but then, I suppose these persons in the Church must be interpreted to be only the most inferior, and so no reflection on the administration: as men of characters and stations in the State were construed to be constables, excise-men, and custom house officers, so these persons who were to bring about the comprehension, and are now blowing up and undermining the Church in another manner, must be church-wardens, parish-clerks and sextons. These sort of constructions by the Doctor's learned counsel, are so easy and natural, that I must agree with his observation, that they have not much argument, learning or eloquence to support them.

And I cannot but observe a very extraordinary method of answering this passage and the next, by one of the learned counsel; he is pleased to cite two other passages in the Sermon, which were never mentioned by me, or any of the managers of this Article; and with very strenuous zeal he explains those passages by chiming in with the Doctor, in charging Occasional Conformists with Atheism, Deism, and the worst of crimes; and then he concludes, that the Doctor, in those passages he cited, has not asserted the Church to be in danger under her majesty's administration; but not one syllable to this passage, which I cited in page the 16th.

The third place I troubled your lordships with, was in the 18th page; his words are "falshood always implies treachery; and whether that is a qualification for any one to be trusted, especially with the guardianship of our Church or Crown, let our governors consider:" These words speak so plainly, they need no comment, nor have they offered at any explanation of them; they must relate to persons, and can have no reference to books or pamphlets, blasphemies or heresies, &c. by any construction whatever.

The fourth passage, my lords, was in page the 20th; he is talking of dangers from national sins, which are occasioned by Dissenters and False Brethren; and then he says, "And now are we under no danger in these deplorable circumstances? Must we lull ourselves under this sad repose, and in such a stupid lethargic security embrace our ruin? I pray God we may be out of danger; but we may remember the king's person was voted to be so, at the same time that his murderers were conspiring his death."

The substance of the charge in this passage, is an intention to reflect on the members who voted the Church to be out of danger, by the comparison and allusion to the vote relating to the king. The meaning seems evidently, that though the king was voted to be out of danger, yet he was not out of danger, and so though the Church was voted out of danger, yet the Church was then, and is still in danger: but whether he meant it of the members that passed that Vote, is the question; he says he only meant it according to his notion of that vote of the king, that those not privy to the design against him voted him safe, whilst others conspired his murder; so when the members voted the Church of England to be in no danger under her majesty's administration, it was none of them, but others, that were conspiring her ruin.

The Doctor was pleased to say too, that that Vote was a year and a half before the king's death, and that there were not a tenth part of those members who voted the king safe, the rest being turned out, and no House of Lords: be that as it will, they were the same parliament that voted the king out of danger; and they that conspired his death were part of those that voted him safe, and who turned out the rest to accomplish their designs: and though the parallel should not run so as to reflect on both Houses of Parliament, and all the members, yet if it glances at some of them, and was so intended, it is a

circumstance of aggravation, and that is the only intent of its being part of the Article; and I cannot but think the Doctor was apprehensive of some reflection of that kind; for he says immediately in the very next words, "That he hopes what he has so freely spoken, will not give offence:" if he had not a view to that vote of the danger of the Church, there was no occasion for that apology. The fifth and last place I troubled your lordships with, was in the last page, where there were some pathetical expressions which the Doctor chose out of the Scripture, and managed them with others of his own, so as to represent the Church to be in the utmost peril; he mentions nothing of vice, blasphemy or infidelity: "But that she lies bleeding of the wounds she has received in the house of her friends:" He cited the Lamentations for it, but there being no such text there, I took the liberty of saying it was a lamentation of his own making.

I should not trouble your lordships any more as to this particular, but that I am in some measure obliged to vindicate myself from what one of the learned counsel hinted upon this occasion; he was pleased to say in the defence to the first Article, he was as much at a loss to find out a passage in the Sermon, as one of the managers was to find the text in the Lamentations. Though, my lords, this is but a trifle to the thing in question before your lordships, yet since that learned gentleman was pleased to triumph, as if he had me sure and unanswerable on this point, I beg your lordships' indulgence that it may appear which of us is in the right.

The Doctor cited that text to be in the 2d of Lam. 4th. I looked through the Lamentations, therefore knew I might venture to say what I did; I have looked over it again, and am sure there is no such text there. It gave me occasion to read and reflect on the other texts cited by the Doctor in the prophecy of Zachariah, the 13th chapter, where there are some words that I suppose are meant, though I could not but observe the Doctor to be very unhappy in the choice of his Scripture, this as well as others being directly contrary to his purpose. The words cited are in the 6th verse, the two preceding verses explain them; the subject matter was false prophecy. In the 4th verse it is said, "It shall come to pass in that day, that the prophet shall be ashamed, every one of his vision, when he has prophesied." In the 5th verse the prophet is to deny that he is a prophet, and say he is a husbandman and no prophet. And in the 6th verse he is asked, where he received his wounds? He answers, in the house of his friends: so that he retains the character of a false prophet all along; and what he says in each verse is equally true, and consequently that the wounds he received were not in the house of his friends. Whatever may be thought of the Doctor in this matter, I think I may conclude, that his learned counsel had his Scripture by hearsay, or else he would not have triumphed when he had so little reason. There was a dispute, my lords, not many years since, between two learned divines of our Church, about the rights of our convocation; one insulted the other for his ignorance in the Common-Prayer book; but upon examination it appeared, that he who triumphed most, was most ignorant of what he charged on the other: whether this case is not somewhat applicable, I submit to your lordships.

Having done, my lords, with the several passages made use of to maintain this Article, I think I may say the charge contained in it, (that the Doctor asserts the Church to be in danger, not only generally, or so as to be meant from vice, infidelity, schism or heresies, blasphemy or profaneness, but from under her majesty's administration) is not only affirmed, but strongly proved. He is not charged here with speaking contrary to his words, or with negative crimes, nor is his silence, as he was pleased to say, made criminal.

I must now beg leave to observe a little on the evidence produced on the Doctor's behalf, and in his defence to this Article. Your lordships had a collection of many scandalous books and pamphlets, drawn from obscurity, to be republished to the world, for the more effectual suppressing blasphemy and profaneness: and since the Doctor's counsel forbore to mention the particulars, I shall not enter into them; only in general I think I may say, that they have been proved to have been no way material to what is in issue before your lordships: but it may not be improper to take notice, that most of these books appeared to have stolen into the world, and the authors still concealed; some of them printed in Holland 17 years ago, and others published since the Doctor's Sermon: and for the Observator, and Rights of the Christian Church, it is well known the author of one, and publisher of the other have been prosecuted; so that these cannot be said to be tolerated with impunity, nor meant as the provocation for the Doctor's censure.

I am sorry there are any of these profane and impious pamphlets: there are some others too, that have been published within these 17 years, which might have been taken notice of; but I do not find them in the Doctor's catalogue. There was a blasphemous Sermon preached and published by Dr. Binks; Mr. Dodwell's Charge of Schism, and unbishoping most of the present bishops; the same gentleman's Baptismal Union of the Spirit, or his No Immortality of the Soul; and one Mr. Lesley's Project of uniting ours and the Gallic Church: whether these books were thought by the Doctor to tend to the right establishing our Church and true religion, I need not say, but I do think they were worthy his notice, and may vie with most in his collection; and if he had been so incensed against erroneous doctrines, it had been a worthy task sure, and well becoming his honest well-meaning zeal,

to have endeavoured a confutation of them; then his asperity in rebuking, his harsh and vehement expressions would not have been ill employed: but, instead of this, to turn his violence against his superiors, for not punishing what, it may be, they never heard of; and to lay the danger from these doctrines at their doors, is not to be justified by any pretended provocation of this kind whatsoever.

There was another piece of evidence produced to your lordships, some proclamations against immorality and profaneness: if there is any thing to be inferred from them in the Doctor's favour, I must own I cannot conceive it. Because the queen commands the magistrates to put the laws in execution, therefore every private divine may arraign his superiors, for a supposed neglect of their duty, as often as he thinks fit; I say, I do not understand this inference, but I can easily apprehend the consequences to all governments that will suffer such presumptions.

The Doctor himself was pleased to say, that one of the dangers of the Church mentioned by him was forgot by the managers, that was from Papists and their emissaries: I will do him the justice to remember, that he has bestowed six lines on this danger, but 26 large pages on the danger from those in Church and State. Then it was said, that the Doctor prays for the queen, has taken the oaths to the queen, and therefore he could have no intention to reflect on her majesty, or any part of her administration, either in Church or State. And the Doctor in his own Speech was pleased to acknowledge her majesty to be a nursing mother to the Church: but I could not observe one syllable to the reverend fathers of the Church, of his opinion of their care of it: I could hear him admonish that venerable bench of the guilt of departing from the Church, and abandoning the principles of the Church, if they should punish him, a true son of the Church, for preaching the same doctrine with theirs; as if there was no manner of difference whatever.

It seems, my lords, very strange, that after a charge of this nature of reflection upon his ecclesiastical superiors, that, after having studied so much submission, he should not prevail with himself for so much as a compliment on this occasion. Such behaviour seems to need no explanation. I should be very unwilling to recollect any of the Doctor's charitable opinions of his own brethren, who, as he is pleased to say, can sacrifice their solemn declarations and oaths to complaisance and preferments. I would be so charitable as to believe well, and think favourably of all men; but when the contrary does so manifestly appear, it would be injustice to the rest of mankind not to judge accordingly. It would be a remissness and negligence of duty, justly blamable, if we were to shut our eyes, and resolve not to see what so evidently threatens the peace and quiet of the kingdom. If men must be allowed to vent their displeasure at such proceedings of their governors which do not suit their particular humours, what must become of the credit and reputation of any government, which is so necessary to preserve it?

Your lordships have heard a great many objections against innuendoes, that they are dangerous things, and never encouraged; and that your lordships have been pleased to shew your dislike of them. I shall not scruple to own, that to lay a meaning to a man when his words will not bear it, to make any invidious construction when it will admit of a favourable one, I can neither approve or desire. But because the extreme or ill use of any thing is not to be allowed, that therefore you must never apply it at all, is such logic and law as I have not been used to.

My lords, in the case de Libellis famosis, cited by the Doctor's counsel, your lordships will find, that if only plain, positive assertions are libels, there will be no fence against the envy and malice of wicked spirits: and if the law has guarded every private man's reputation, so as not to be blasted by oblique turns and scandalous insinuations, it would be very hard if those in authority should be exposed to the virulence of every discontented humourist. Malice will never want a pretence, or means to convey scandal and reproach by sly parallels and allusions, which may do equal mischief with positive assertions: but I must observe to your lordships, that there are not only oblique insinuations, but positive assertions.

Not only those passages which I have produced, which are express, but the whole scope and tenor of his Sermon, relates to the peril of the Church from persons in Church or State, and not those evasive shifts of vice and infidelity, books and pamphlets. If the Doctor had only rebuked immorality, blasphemy, profaneness and irreligion, he might still have attended his flock, and they not have been brought to attend him;* nor would he have been thought to arraign the resolution of the parliament. But for him to take upon him to censure and expose his superiors, and to insinuate into the minds of the people the danger of the Church from those persons who have the protection of it, is no likely method to suppress immorality and profaneness, and is directly contrary to the words and intent of the resolution of your lordships and the Commons.

To what end the Doctor has thought fit thus to disperse his Sermons may be easily imagined; and your lordships cannot be unacquainted with the history of a neighbour nation, what temporal ends were to be accomplished by a loud out-cry of danger to the Church, the Church, Religion and the Church. Whether that will not bear a parallel with the groundless clamours which have occasioned many of

* "His parishioners, part of the mob that attended him to and from his Trial." *Former Edition.*

our present unhappy divisions, I submit to your lordships.

It remains, my lords, that I answer one of the learned counsel, what the nature of this offence is: I shall only tell him in the words of your lordships and the Commons' Resolution, made public by her majesty's proclamation, "That whoever creates unreasonable distrusts, and groundless jealousies in the minds of the people; whoever distracts the kingdom by false and seditious rumours of the danger of the Church, to cover designs they dare not own; whoever goes about to insinuate that the Church is not in a safe and flourishing condition under her majesty's happy administration, is an enemy to the queen, the Church, and the kingdom." Which, in other words, is, against the law, against the temple, and against Cæsar has he offended.

Nay, my lords, has not this bold offender gone yet farther? Has he not told your lordships at your own bar, That notwithstanding the Toleration the Dissenters are Schismatics, and liable to spiritual censure; that by continuing the indulgence to them, you countenance schism; and that while schism is continued, the Church must be in danger? So that resolve what you please, and make what laws you will in their favour, he must still thunder out his vehement anathemas against them, as dangerous to the Church.

This, my lords, is a specimen of that independency of the Church that of late has been so much struggled for; and which, if not confuted in time by authority, may soon devour the supremacy and the state. And since the Doctor has and does still thus presume to defy and arraign the Resolution of your lordships and the Commons, he is properly before this tribunal; and I may apply to him the saying to a goat browsing on a vine, and which was applied to one of another function upon such an occasion, who had defied the power of parliaments:

Rode Caper vitem, tamen hinc cum stabis ad Aras,
In tua quod fundi Cornua possit, erit.

My lords, the Commons are so fully assured of your lordships' wisdom and justice, that they cannot question but your determination in this proceeding will be to their satisfaction; therefore I shall trouble you no farther, but submit to your lordships' judgment.

Serj. *Parker.* My lords, having already, by command of the Commons, endeavoured to make good the fourth Article of this Charge; it is now my duty to support what I offered before, both against the particular objections, and the general rules, proposed or insinuated by the counsel, or the prisoner.

The first thing I attempted to prove by particular passages, was the second clause of this Article:

"That Dr. Sacheverell suggests, that there are men of characters and stations in Church and State who are False Brethren, and do in themselves weaken, undermine and betray, and do encourage, and put it in the power of others, who are professed enemies, to overturn and destroy the constitution and establishment."

This I thought would be plainly made out, if I could shew these two things:

1. That the Doctor has asserted, in express terms, of all False Brethren in general, that they do in themselves weaken, undermine and betray, and do encourage, and put it in the power of others, who are professed enemies, to overturn and destroy the constitution and establishment. And,

2. That he charges persons of characters and stations with False Brotherhood.

Apprehending the consequence clear, that if these two things were asserted by the Doctor, the charge was just.

I used likewise some farther proofs, which I shall not need repeat.

Besides some little cavils as to the two propositions, which I shall take notice of by the way; great complaint is made, often repeated, and much exaggerated, that I have brought together these two propositions, that are twelve, or nine, or at least seven pages asunder.

My lords, I took notice of this trifling objection before; and what I said to it, neither the Doctor nor his counsel have attempted to answer.

But they all seeming to lay the greatest stress upon this part, and the counsel every one repeating it, I beg leave to state once more how that matter stands.

The Doctor in this Sermon proposes, (1.) To describe False Brotherhood; (2.) To shew the mischief; and (3.) the malignity of it.

And this single consideration would make one expect, that these heads should relate to one another, at whatever distance he takes them up.

Under the second head, page 15,* he asserts, of all False Brethren in general, that "they do in themselves weaken, undermine and betray, and do encourage, and put it in the power of others, who are professed enemies, to overturn and destroy the constitution and establishment.

This is my first proposition in terms, and nothing is objected to it.

Only a little attempt is made to divert the question, by mentioning some particular sorts of False Brethren, and saying he there speaks of False Brethren in some of these senses of the word.

I agree it: He that speaks of all, speaks of such as are included in those senses of the word which he mentions; but likewise speaks of all others too; speaks of such as he has mentioned any where else, as well as there, such as are men of characters and stations, as well as such as are not.

* Note, the pages of the Sermon are referred to as in the second edition, which was that which was proved and read in evidence. *Former Edition.*

Under the third head,

In shewing the malignity of this sin (not in itself, that he had shewn before, but) with regard to the world: He instances first, in the mischiefs arising from men of characters and stations, in the words I formerly cited. This, I thought, made out my second proposition to be the Doctor's, "That men of characters and stations are False Brethren."

This is faintly denied; and it is said, he does not here suggest men of characters and stations to be False Brethren; but what is here spoke relates to their private behaviour, and not to the administration.

Besides, that this is directly against the plain import of the words: to let your lordships see the candour of this Defence, let us suppose it true; and that it is the Doctor's opinion that the persons he here speaks of, be they great or mean, are not False Brethren.

Then the Doctor, to be consistent with this Defence, must affirm, that he here sets forth the malignity of False Brotherhood, by shewing the malignity of another sin which is not False Brotherhood, in persons of characters and stations, who are not False Brethren.

This is the wretched shift he is driven to, taking it the best for him.

That these characters and stations relate both to Church and State, all his discourse in the places cited, and every where else, shews; nor has he or his counsel made it an objection that they do not; so that it would be very much misspending your lordships' time, to go to prove, what is not denied, that by men of characters and stations, he intends men of characters and stations in Church and State.

The two propositions being thus cleared, let us see if that which is laid hold of to declaim so earnestly upon, have any more weight in it, that is, the joining together these two distant propositions.

The objection, rightly stated, is this:

He has in one place affirmed of all False Brethren in general, "That they do in themselves weaken, undermine and betray, and put it in the power of others, who are professed enemies, to overturn and destroy the constitution and establishment."

And seven pages off, has represented men of characters and stations as False Brethren.

And we (very unreasonably!) have charged him with suggesting, "That there are men of characters and stations in Church and State who are False Brethren, and do in themselves weaken, undermine and betray, and do encourage, and put it in the power of others who are professed enemies, to overturn and destroy the constitution and establishment."

This is the true strength of the objection, and the very stating it exposes it.

The general mischief he mentions, as common to all False Brethren, page 15, I presume will be admitted to belong to those described, page 7; why then not as well to those page 22?

Must not what is said of all False Brethren, extend both to those whose crime he describes, and to those whose malignity for that crime he exposes?

And, which is most to be regarded, the distance of the place, or the connexion of the scheme, and the nature of the propositions?

The Doctor himself seems rather to press the objection thus, that this is inference, and joining independent propositions; which, though spoke by him in general, the unanimity of his counsel in falling upon this part of what I said, shew, it was spoke principally with a view to these two passages. Are then passages that speak of all False Brethren, and that speak of some particular False Brethren, independent?

My lords, these are so far from being independent, and so ill have they chosen out what to find fault with, (that if your lordships will pardon the pedantry, considering I have a man of logic and disputation to deal with) the two propositions are the two propositions of a syllogism, concluding in the first figure.

And the inference he complains of is the conclusion necessarily arising from them, according to the rules of logic.

The whole syllogism runs thus:

All False Brethren do in themselves weaken, undermine, and betray, and do encourage and put it in the power of others who are professed enemies, to overturn and destroy the constitution and establishment.

Persons of characters and stations are False Brethren.

Therefore persons of characters and stations, do, &c.

The two first propositions are what I have shewn the Doctor plainly to lay down; the other only a necessary consequence.

Would any one expect that the Doctor should be so forgetful of the rules of logic, as when he had laid down the premises, to deny the conclusion? Or to deny the conclusion to be his doctrine, who laid down those premises?

Can it be thought, that he laid them down without an intention that his hearers should make the conclusion? Or could he think it possible they should not make it?

Or, shall the suppressing a conclusion so plainly arising, which is taken notice of in some that write of logic as an elegance in discourse, pass for an excuse?

Let the Doctor describe False Brethren in general as betrayers and destroyers of the Church, and the proper objects of the rage and fury of the people, and then expose as False Brethren those in the administration, persons of characters and stations, from the chief to the least, the people will quickly make the application.

If any one should inflame the mob to such a degree of rage and mistaken zeal, as to forget the spirit of the Gospel, and to believe it their duty to serve God by breaking the public peace, and to support his Church, by pulling down all meeting-houses, and rifling the houses of all Dissenters; he needs afterwards only tell

them, This is a meeting-house; here liveth a Dissenter, they are not so dull as to fail of making the conclusion; therefore this house is to be pulled down; therefore this man is to be plundered; and of putting it immediately in execution where they dare.

Suppose such a man should, in defence of himself, say, "I did not bid them pull down this house, nor rifle that; my telling them all meeting-houses were to be pulled down, all Dissenters to be marked and plundered, was four months before I told them this was a meeting-house, or that man a Dissenter; and to carry back a man's words, spoke only by way of information, to what was said four months before by way of doctrine, is the greatest hardship in the world."

Would this pass for an excuse? Or would it not add to the indignation against so impertinent a trifler on so sad an occasion.

My lords, the burning a meeting-house, the burning all the meeting-houses, the laying this metropolis once more in ashes by the enemies of our constitution, is nothing to the inflaming the nation, and rendering the queen and her administration odious to the people.

Shall it then be an excuse for the Doctor here, when he has laid down the premises, to say, that he has not in words expressed the conclusion?

Shall the meanest of the people, clearly and rightly collect, this is Dr. Sacheverell's doctrine; and shall not we in accusing, and your lordships in judging, be allowed to collect it, when we are endeavouring to preserve the queen and constitution, and all that is dear to us?

Surely, my lords, we shall. Nor is the strict consequence that your lordships find in this clause, always necessary in cases of this nature: but I was willing to shew it here, that your lordships may see with what justice this was made the great topic whereupon to declaim against hardships; and to couple such inferences with innuendoes, as if both were the same.

As for taking one part of one sentence, and another part of another, whoever makes a conclusion in logic ever does it; and only then does amiss in it, when in doing it he departs from the proper rule, and where the consequence is not just; which I have shewn is not the case here, and nobody has attempted to make out that it is.

It is as little to the purpose what is said, that he has not restrained this to persons of the highest characters and stations; which I shewed so fully before, that it has been thought more advisable to pretend I admitted what I believe I plainly disproved, than to offer any answer to my reasons.

I will only add, that it is not pretended, that there is one word in the Sermon that looks like the least hint, that only inferior officers were meant; and it is plainly shewn that others were intended: and then the Doctor's excuse amounts, at best, but to this: he has indeed spoke in reproachful terms of magistrates in general, he has pointed to those that have, and those that bestow the honours of the Church, and places and preferments in the state; he has pointed to the chief; his reasoning, when he shews the malignity of the sin from examples of persons of characters and stations, is the stronger, the greater these persons are, as the examples of the greatest are the most contagious; but yet he relies upon it, that since the general mention of persons of characters and stations takes in the meanest as well as the greatest, it is not to be doubted but the all-discerning people, especially when sufficiently fired and enraged, will restrain the words to the most innocent meaning, and apply them only to inferior officers, constables, and those in the nearest degrees to them.

This is the sum of this notable excuse.

Let this therefore, where, by bending their united force against it, they seemed to have the greatest hopes of making some impression, serve for the specimen chosen by themselves, of the hardships of inferences and innuendoes in this charge.

The third clause, "That he chargeth her majesty, and those in authority under her, with a general mal-administration; the first, That he suggests that her majesty's administration, both in ecclesiastical and civil affairs, tends to the destruction of the constitution;" are so manifest, that after what has been said, and is unanswered, it would be but losing time to attempt to make them more plain.

And their defence, and the books and pamphlets read on this head, are not to the purpose.

For sure, the shewing that there have been some paltry scribblers, few in number, many long since dead, some mad, some that have undergone the infamous punishment of the pillory, most of them prosecuted or unknown, does not prove that there are seminaries for the open profession of those blasphemies and impieties; much less, that they are suffered by the government, or that their follies can be called an open violence upon the Church, or their faults made the general character of the nation, and charged upon the queen and her administration.

When a scandalous book is published, or contagious sin committed, any subject who has a real zeal to prevent the mischief spreading, may apply to the proper magistrate to suppress it; and if inferior magistrates neglect their duty, may carry the complaint, against them and it, to their superiors.

But is it to be endured, in any established government, that a man pass over all the magistrates, and make an appeal to the people, not only against the offenders, but against the magistrates too?

This is properly faction, this is invading the royal authority; it is in the Doctor's own words, "A rebellious appeal to the people as the dernier resort of justice and dominion;" it is erecting a popular tribunal, where not only

scribbler, but the queen and her authority are to be tried.

The Doctor, indeed, pretends that his zeal was only against those offenders, and such as keep not within the bounds of the Toleration Act; that his warmth of speech was only to stir up the magistrates to put the laws strictly in execution; and he solemnly protests he intended no reflection on the queen, or her ministry; that by the dangers of the Church, he meant only those judgments, which the just anger of a provoked God might be reasonably expected to inflict on so wicked a people.

I cannot pretend to repeat his very words, but I apprehend this to be his sense, and beg pardon if I mistake his meaning.

My lords, I am amazed at the Doctor's solemn protestations. I will avoid hard words as much as I can; but if, when he calls God to witness in so solemn a manner, he should then speak without foundation of truth, plainly against his Sermon, and be even then using the little arts of evasion, and diverting the question, instead of that sincerity which ought to accompany so solemn an oath, I leave it to your lordships to give a name to such behaviour.

Is it possible to say he intended not to reflect on the administration?

Give me leave to read to your lordships, two pages in his Sermon, to which I before referred; and be pleased to observe, as I go along, how much they are applicable to unknown authors, or the dead, to Asgill, the Observator, the Review, or other writers, that he has made so filthy a collection out of; or to Atheists, or Dissenters exceeding the limits prescribed by the Toleration; or to Occasional Conformists, Dissenters too in the main, but when the occasion of a place calls them to Church; and your lordships will have one instance of his sincerity in his solemn protestations.

"2. Secondly. In regard to the world, what a vast scandal and offence must it give to all persons of piety and integrity, to see men of character and stations, thus shift and prevaricate with their principles, and starting from their religion, upon any occasion of difficulty or trial, and like the disciples, flying from and forsaking our Saviour, when his life lay at stake? To see men's opinions sit as loose about them as their garments, to be put on or off for convenience? What can unwary persons conclude from such tergiversation and hypocrisy but that all religion is state-craft and imposture? That all godliness is gain; and that the doctrines of the Church lie not so much in her articles, as her honours and revenues? Without doubt, this modern latitude and infamous double dealing, as it can proceed from nothing but the rankest Atheism, so it must propagate it wheresoever it goes; and it is not to be questioned, but that the wonderful increase and impudent appearance of all sects and heresies in this kingdom at present, beyond what was ever known in former ages, is chiefly to be attributed to it. But this crime is as pernicious to human society, as religion; for it destroys all common honesty, faith and credit in the world, and in the place of it, sets up an universal trade of cozenage, sharping, dissimulation and downright knavery. For what dependance can there be upon a man of no principles? What trust in equivocations, evasions and lies? Nor indeed could any one be supposed so foolish, as to place the least confidence in these men, did they not bait their hook, and cover their treachery with the sacred and plausible pretences of friendship, whereby they are capable of doing much more mischief, than a here-faced and professed enemy. In what moving and lively colours does the holy Psalmist paint out the crafty insidiousness of such wily Volpones? 'Wickedness,' says he, 'is therein, deceit and 'guile go not out of their streets. For it is not 'an open enemy that has done me this dishe- 'nour, for then I could have borne it: neither 'was it mine adversary that did magnify him- 'self against me, for then, peradventure, I 'would have hid myself from him. But, it 'was even thou! my companion, my guide, 'and mine own familiar friend. We took sweet 'counsel together, and walked in the House of 'God as friends. There is no faithfulness in 'their mouths, their inward parts are very 'wickedness; their throats are open sepulchres, 'and their words are smoother than oil, yet be 'they very swords.' Like Joab, they pretend to speak peaceably, and smite us mortally under the fifth rib.

"3. Thirdly, With regard to a man's self, it is hard to distinguish, whether our False Brethren prove themselves guilty of more excessive knavery, or folly. For whatever these cunning temporizing politicians may think, they will find, after all their shuffling and compliance, that the plain road of truth, honesty, and integrity, is both the most prudent, as well as the safest way they can follow, and that the wisdom of this world is as much foolishness with men, as it is with God. For certainly there is no sin that so much disappoints its own ends as this does. Perhaps the man may obtain the present advantage he has in prospect, by relinquishing his old friends and principles; but is ever such a mercenary convert received heartily into the bosom of his former enemies? Or, are they ever found so credulous, and good-natured, as to forgive, and believe such an apostate cordial and sincere, and fit to be trusted in any matter of weight or importance, who has betrayed his own party for the little sordid lucre of a place, or preferment: and is again ready to be retrograde, whenever the wind shall change, and veer about? Such a False Brother may serve the present turn of his adversaries, who may seem, whilst they want the tool, to flatter and caress him; but let such a turn-coat rest assured, he shall meet with hypocrisy for hypocrisy; and since he is got upon the stage, shall act his part and be hissed off when he has done. Such a wise game do our projectors play, they barter and betray their friends only to sell themselves slaves into the

hands of their enemies, who shall treat them with more insolence, disdain and tyranny, than honest men do with scorn and contempt, if they do not go the whole lengths of their party, stick at nothing, though never so impious and absurd, and run from one extreme to a quite contrary. Thus little, thus base, thus odious, thus contemptible, thus servile, nay thus execrable is the traitor and double dealer in the sight, not only of all honest men, but the most professed knaves, and hypocrites! Who cannot but have a tacit regard and veneration for a man of steadiness and probity, that upon all occasions is true to himself and his cause; is above the threats, as well as flatteries of this world, still trusting in his God, and his own integrity and justice, despising his interest or success, and is under all circumstances like that God, and religion he believes and serves, without variableness, or shadow of change, but is the same to-day, to-morrow, and for ever. Farther, these False Brethren cannot be more odious to God and man, than they are to themselves, who are always a self-contradiction, full of confusion and perplexity, perpetually haunting themselves, the worst of dæmons, maintaining an irreconcilable war betwixt the outward and inward man, conformists in profession, half-conformists in practice, and non-conformists in judgment. Such a mixture of inconsistency and nonsense, that any one that has the least spark of conscience, or reason, must renounce and detest. But this dismal effect has such a state of habitual hypocrisy, that it quite damps and extinguishes both, quenches the Holy Spirit of God, and crucifies his Son afresh, and as it finds a man void of shame, generally (without a miraculous conversion) leaves him incapable of repentance, and both damns him here, and hereafter; and as he chose it in this world, appoints him in the next his portion with hypocrites, and unbelievers, with all liars, that have their part in the lake which burns with fire and brimstone, with the grand father of falshood, the devil and his angels. And so here we leave our False Brethren, in the company they always keep correspondence with."

To go on. Is that true that he only calls upon the magistrates for justice upon these offenders?

If his intent really were to exhort the magistrates (before whom he preached) to put the laws in execution, one would expect to find it vehemently pressed under the fourth head, where he undertakes to shew what should be the result of all; but I have searched carefully, and can find nothing there, nor any where else, of any such exhortation.

There is indeed a calling upon the pastors of the Church, who were not present, to thunder out anathemas against schism; which could not be to persuade those pastors that did not hear him, but to condemn their remissness to the people that did. But all the rest is to the people, to adhere to the fundamental principles; to watch against, mark and avoid, those that desert them; to give place by subjection, no not an hour: to despise sneaking, shuffling compliances, and put on their bravest resolutions, which the present case required: There is a denouncing woe to the fearful heart and faint hands; a shewing the perils and low estate of the Church, that her sons deserted her, that she lay bleeding of her wounds; that her adversaries were chief, and her enemies at that time prospered.

Is this the language of one, that is only laying before magistrates the abuses of a few inferior persons, within their power, subject to their authority, and whom they could easily crush, and desiring those magistrates to correct them?

In short, is it calling upon the magistrates, or upon the people, for justice?

Again:

He solemnly declares his meaning in the Sermon to have been, That the dangers of the Church are only such as arise from the sins of the nation, but not in the least from her majesty and her administration.

Let any one cast his eye upon the Sermon, or upon the Dedication of that preached at Derby, and try how the several expressions suit this scheme; and he will see, the Doctor had nothing of it in view then, but that it is contrived since, for him to pretend now.

What dangers of the Church and Constitution he means in the Sermon is too plain to be shifted off by a protestation: he tells you expressly what they are, and from whom: from men, whom he describes as being in the administration, who undermine and betray the Church, and enable others to destroy it; they are such as he apprehends, not from the hands of God, but from the treachery and violence of men.

Accordingly, the whole tends to stir up anger, indignation and fury against those men; not to move humiliation and prayers to God, to avert those impending judgments.

But possibly he may expect to be understood, not of an immediate vengeance of God, or his delivering us into the hands of a foreign enemy, but his permitting wicked men at home to overthrow the Church.

If we take it to be so, this solemn protestation is a mere evasion, and a shifting the question.

It is true, the overthrow of the Church and Constitution is the heaviest judgment can befal us, and if it does happen, must be accounted the act of Divine Justice punishing us for our sins. All national punishments are certainly the more immediate acts of the justice of Providence; and the instruments made use of to bring them about are very often wicked men.

The profane writers, the Atheists, the abusers of the Toleration, the vilifyers of Holy Orders, of the Church, and of Christianity, and other wicked men, may have given great provocation to Almighty God; and if I should say so great, as may give just cause to fear a judgment upon us, that may endanger the

Church and Constitution; yet still the question is, what hands are about to execute this judgment upon us? We charge him as representing the Church in danger under her majesty's administration; as suggesting that her majesty's administration, in Church and State, tends to the destruction of the constitution; and consequently, that the hands of those in the administration are about to execute such judgment: And he solemnly protests, he apprehends no danger but from God.

My lords, this is trifling; for every such danger is from God, and is his judgment, whoever they be, whether her majesty, and her ministry, or any others, that immediately bring it upon us.

This, therefore, instead of answering, is evading, and diverting your lordships' view from the persons he charges to be working the ruin of the Church, to God, the supreme director and over-ruler of all the actions and designs of men. As if the reflection on the queen and her administration were the less, for saying, that they are the instruments in the hand of God to scourge the nation for its sins, and to execute his vengeance in overthrowing the Church and Constitution.

So that I am afraid, this part of his solemn protestation is either false, or evasive, or both.

And let so much suffice to be added on these clauses.

To what I offered to your lordships on the clause of keeping up distinction of factions and parties:

I desire to add the weight of one authority, out of the excellent Sermon preached by the most reverend prelate, my lord archbishop of York, and produced by the Doctor.

The words are these: "They are factious, they are setters up and abettors of parties, who endeavour to destroy, or unsettle, or disparage, or in the least hurt or weaken the government, and the laws as they are established: let the principles on which they go, or the pretences they make, be what they will."

Whether the Doctor hath not endeavoured in the highest degree to disparage the government, and consequently to weaken it, your lordships will judge.

As to the other clauses, they have offered very little, and I will not repeat what I said before.

Only I would take notice, that under the head of stirring up to arms, something was urged by the counsel in relation to what I said upon some texts of Scripture, but so entirely mistaking my meaning, that I think myself unconcerned therein.

As for perverting Scripture;

The counsel would seem to pretend something or other to be the mistake of the printer, without saying where the mistake is, or how they would have it read.

I will tell your lordships what the mistake is; it is printing the second chapter of Lamentations instead of the first, and misplacing the references to Lamentations and Zacharias; which I scorned to take advantage of, and, in what I said, rectified.

But this served for a shew of an excuse.

They said something more on this head, but not to what was my objection; but promised the Doctor should clear all.

My lords, I think I might reasonably here put an end to the trouble I am giving your lordships; but that I apprehend some things which fell from the Doctor, and which have not fallen in my way already, may be proper to be taken notice of, so far as concerns what is within my province.

I own, his speech was extremely well composed, fitted not so much to inform (his case would not bear that), as to move, (wherein his hopes were more justly placed;) not so much to state the question, and clear it, as to divert it: All the plausible topics were laboured, and all the arguments that pressed hardest upon him, and most required an answer, passed over in silence; the whole framed to give the passions mastery over reason, and to induce a persuasion, that so good, so excellent a man as he painted himself, that has so many virtues, so great sincerity, so true a zeal for religion, could not be guilty of this charge, though plainly proved upon him: The protestations were strong and hearty, and such as will read well amongst the people; clear of all those qualifying clauses, that might perhaps have made it suit better with the truth of his case, but would have had the inconvenience of giving to the readers suspicion of guilt. An agreeable concern for religion and virtue ran through all; which will always strike an audience, and seems intended to make some amends for the rage and fury, and zeal for party in the Sermon.

I only wish, for the Doctor's sake, the composer had preserved a little more regard, as well to what was fit to be said here, (where the truth of the whole matter is known) as to what was fit to be said abroad, and given it a little more resemblance of the Doctor and his Sermon; that he had not calculated so many parts of it for an appeal to the people, and to obtain their acquittal upon his own word. And I must needs say for myself, (though my liking, or disliking it, is of very little moment) had it had fewer and less solemn appeals to God Almighty, or more truth, or I known less of the matter, I should have liked it much better.

He begins with making his order, the Church and Christianity to be concerned in the cause; intending it, I presume, to be understood abroad as a charge upon his accusers, that in his person they arraign all these.

But I shall not pretend to follow him throughout the whole speech, only point out some fallacies in it.

My lords, great regard is to be had to the word, much more to the solemn declaration, much more to the oath of a clergyman, when he is free and unbiassed.

But when he stands in judgment, when the rod is over him, when there is only one way

open for escape from the just punishment due to his crimes, by protesting his innocence; neither his word, nor his declaration, nor his oath is to be regarded.

That method will acquit all that are accused; and the less conscience any such wretch has, the surer and easier will be his escape.

And therefore your lordships will judge, by what the Doctor has taught the people, what he has published, and not by what he pretends to be his intentions in doing it.

He makes complaint of the generality of the Charge, that it was such that he knew not where it would point.

My lords, suppose we had followed the more common way, and set forth all the passages we have read, or the whole Sermon and Dedication verbatim, (as we might have done) without pointing out what we objected to, or why; had that left him less in the dark? It was therefore more for his advantage, that we should tell him the particular points we would insist upon, than if we had left ourselves at liberty at the Trial, to make as many points as we then pleased.

He lays it down for a rule, that the higher the charge is, the more clear ought the proof to be.

My lords, the proof here is indisputable; the Sermons and Books are not denied to be his. And these are all that strictly make the evidence in the case; the rest is but argument, and shewing them to be libellous in the particulars in the Charge.

But take proof in a larger sense, so as that it may extend to the reasoning upon the evidence, and to the making good the Charge, as in this case is perhaps not improper:

I have no reason, in respect of this Charge against him, to contest his rule, because the proof of it is clear in that sense too.

But yet, for the sake of justice, I shall take the liberty to say, that, as applied to this case, it is a fallacy.

This sort of proof arises from the sense and doctrine of his books.

And, I presume, the Doctor cannot hope, that because this is charged to be so high a crime, as defaming and undermining the government, any more favourable meaning is to be put upon his words, than if it were the less crime of defaming a private person; or that your lordships should not understand in this case, (that which every body else that hears it, understands) and which your lordships would have understood, if it had not endangered the government.

I own, I cannot comprehend why your lordships should be more shy of defending the government than a private reputation; or most afraid of censuring that which is infinitely the most dangerous consequence, if it escape uncensured.

On the contrary, in the case of those things which tend to the overthrow of the constitution, where the rules and methods of inferior courts cannot apply a proper remedy, your lordships (upon the Impeachment of the Commons) may. Let the contrivance lie never so deep, be never so artfully wrought, when it strikes at our all, it would be absurd to say, the Commons may not bring it to the bar of justice, and your lordships prevent its dreadful effects, and give it the punishment it deserves.

My lords, without that power, your constitution were weak and precarious.

The Doctor observes in what manner the Charge against him is supported, not by express sentences of his, but by inferences, and joining independent sentences, (as to that part I have considered it already); and he seems to expect, that if he were guilty of suggesting and maintaining the things charged upon him, the passages might as easily be pointed to in his Sermon, as the doctrine in those he produced; and that bare reading, without a comment, would convict him.

No, my lords—Even Doctor Sacheverell is not yet arrived at that pitch, as to arraign the government so directly and openly, as to preach a general doctrine.

This fallacy seems very gross.

For is it reasonable to think, that a man that intends to unhinge the government, to expose an administration, to fire the people, to raise sedition, should speak directly and plainly? No—he is to cover his design even from those he is to draw in; he is to pretend zeal for religion, insinuate himself by degrees, not shock his hearers at first with a declaration against a queen they are fond of; he must pretend zeal for her majesty, to preserve their good opinion of himself, while he is doing that which by degrees will alienate their affections from her. This he must do, though there were none to punish, and to prevent the dashing his own hopes of success. But when he knows that the power of the administration he is to revile and rail at, is over him, and at hand; that is a further reason for caution: therefore in such discourses, dark phrases are to be studied, confused descriptions will be frequent, with a perpetual perplexity of expression, between saying what his rancour will not let him with-hold, and with-holding what his fear will not let him speak out. Schemes of speech are to be contrived, that have two meanings; the one more obvious and plain, to have its full effect upon the people; and the other (that will occur to nobody else) a reserve to be offered to a court of justice. This is naturally to be expected in seditious discourses. But if your lordships will pass this by, which has spoke infinitely more plain and audaciously than any other (I believe) that ever so publicly dared authority, your lordships may expect to see a new discourse from the Doctor, where sedition, that had but a very thin disguise in this, shall there have none at all.

And this may serve for an answer to what is urged from his zealous expressions for the queen; for if the whole discourse have quite another tendency, it is plain that those are only parts of the blind and disguise.

He complains, that he is accused for what he has omitted, as if done with design; and his silence is made criminal.

My lords, I was the person that took notice of his omissions, but I did not make them a part of his Charge.

Indeed, when he in his Answer protested (as now he does more solemnly) his loyalty, I took that profession into consideration, as a part of his Defence, which I ought to take notice of.

I had learned that the best way to try the truth or falsity of pretenders to virtue or religion, was by their fruits.

Accordingly I considered his management of his text in this Sermon, how agreeable it was to such profession, and to see what fruits of loyalty I could find there.

And your lordships will now apply those observations to his solemn appeal to God before your lordships, that his intentions, in that Sermon, were to exert his best endeavour for the security of her majesty.

I shewed your lordships, that he omitted the only true notion of False Brotherhood in State, which took in the non-jurors and disaffected, though his text led to it; that he had omitted to make the proper use of the doctrine of Passive Obedience, which was to press obedience and submission to her majesty, though the day and the doctrine seemed both to require it.

That he had set up another notion of False Brotherhood, which I shewed to be, upon his own principles, wrong.

By these I tried his pretences, and shewed, that if they were sincere, this behaviour was unaccountable; but if he were at heart for the Pretender, I made it manifest that all his procedure was just; nay, that even his notion of False Brotherhood was right to him that was of that mind, and that his application of the first of Lamentations was exact and fine upon that supposition, which is never to be justified or excused on any other.

This I then pressed no farther, than to shew that his Sermon had in it no fruits of that loyalty which he pretended.

But I may make a further use of it now, as a plain contradiction to his solemn declaration.

For has he pretended to give any answer to this?

Was I wrong in my notion of False Brotherhood, or was he right in his? Has he made that use of Passive Obedience, as to press submission to the queen from it? Has he not let the non-jurors escape, though his text led him to speak against them, and advanced a wrong notion of False Brotherhood merely to fall foul upon those that justify the Resistance in the Revolution, and cut off thereby every colour of like to the Pretender? Or does he offer to reconcile that proceeding with his pretence? No—And then, though bare omission were not a fault, yet I may now ask, is that omission consistent with his protestation of an intention to exert his best endeavour, for security of the queen? Did he exert or intend to exert his best endeavours, that omitted things so very obvious? Nay, where does he shew that he has exerted any such endeavour at all?

On the contrary, he has fallen into the methods used by those that are against her majesty, to undermine and weaken her title, and to disparage her government, and to render it odious to the people.

He complains that where he presses Obedience to the queen, we say he means the Pretender.

My lords, it was one of the omissions that I urged against him in the manner I have just mentioned, that he no where presses obedience to the queen.

Does he think it had not become him to shew where he did press it, if he could?

Or what name does he think is to be given to his taking it for granted, that he had done that, which it was expressly charged he had not done, and which he cannot shew he has?

He seems to complain of some expressions that have been used against him by the managers, as not becoming this place, or his order.

My lords, I hope we shall always demean ourselves with just respect towards your lordships.

And as to him, he is to consider that there is a wide difference between what a private man says of others, much more of his governors, in conversation, or in popular assemblies, and what is spoke of an accused person at his trial. In the former case, it is not fit to speak ill of them, that which is true; in the other, the crime is to be represented as it is, and the person is to have no respect paid him that shall any way tend to prevent shewing the full enormity of the crime in all its true colours.

And if any thing has been said, which otherwise his orders would have secured him from, let him remember that his crime deprives him at this time of that protection; where it is one aggravation, that he has abused his holy function; which it was the business of the managers both to say and to make out.

He complains that there is no allowance made to a minister rebuking vice and irreligion with zeal, when he happens thereby to be carried into an expression not well-guarded.

My lords, his zeal is levelled more at persons than crimes, he mentions not false doctrines to confute them, nor the faults of those that hear him, that they may amend them; but rails at persons absent to expose them; and raise the passions of his auditory against them; his zeal leads to hunt out faults, for an occasion of complaint; to magnify whatever is amiss, and charge all home upon the government; departing from the office of an ambassador of the Prince of Peace, and preaching sedition and rebellion.

And in such case, his orders are so far from being an excuse, that they are an aggravation; when he who ought to preach peace, long-suffering, gentleness and submission, foments divisions, creates jealousies, heightens animosities, and disturbs the government.

But where there is a Sermon truly tending to promote religion and virtue, God forbid that any incautious expressions in it, though justly exceptionable, should be laid hold on as an occasion to punish the preacher; it has not been done, nor, I think, ought to be.

Yet when a minister presumes to go out of his way, and to meddle with the government, he ought to be more than ordinarily wary in his expressions, since his character gives his reflections greater weight and force with the people, and his errors will therefore do the greatest mischief.

And this man that professes to preach politics, and laughs at those that tell him it is his duty to preach peace, and is inflaming the people against their sovereign, must not think himself entitled to that favour.

I own I am very well pleased to hear the Doctor's declaration in favour of the Succession in the House of Hanover, and his earnest prayer for perpetuating it. Because, whenever our sins shall be the occasion of our losing the best of queens, the security of our religion and liberties for our posterity depends upon it.

But I a little wonder, that he appeals to God, that in this Sermon he had sincere intentions to exert his best endeavours for the security of the queen, and the Protestant Succession. I hope he is hearty for both, but sure his best endeavours for them are not exerted in this Sermon.

As for the queen, I have spoke already.

As for the Succession, I own myself entirely at a loss, in what part of the Sermon it is, that he has exerted any endeavour at all for the security of the Protestant Succession: I do not find any thing that I apprehend can concern it, except that place where he ridicules the notion of any right to the crown but an hereditary right.

The counsel having in great measure declined that head about wresting and perverting divers texts and passages of Holy Scripture, and seeming to promise that the Doctor should give satisfaction therein; I was in great expectation of his performance there; but am miserably disappointed, and cannot but be in some confusion for the Doctor, though he seems to have entire satisfaction in himself.

His conduct upon this clause, from first to last, amazes me.

His Answer put in before your lordships to the Charge of the Commons, is throughout evasive and reflecting; but in this part of it there is a master piece of equivocation and malice, to avoid either confessing or denying the Charge, and to cast an odium on the Commons as persecutors of the clergy.

The words are these:

"Hard is the lot of the ministers of the gospel, if, when they cite the Word of God in their general exhortations to piety and virtue; or in reproof of men's trangressions, or where they are lamenting the difficulties and conflicts with which the Church of Christ, whilst militant here on earth, must always struggle; the several texts and passages by them cited, shall be said to have been by them meant of particular persons and things, and shall be considered in the most criminal sense, and be made by such construction, one ground of an Impeachment for High Crimes and Misdemeanors."

These are the words of his Answer; and, give me leave to ask, do they deny, or do they confess the charge?

Neither——But are an appeal to the passions of the people, amongst whom it has been so industriously and irregularly dispersed.

Yet I dare say every unwary reader took the Doctor to have denied this Charge, and felt some indignation against the Commons for making it.

My lords, he has now come upon his trial, he has been charged home upon this head.

And permit me to say, there cannot be a heavier charge upon a minister of the gospel, nor more affecting to any one that has not abandoned all pretence to common honesty.

Give me leave to mention some of those solemn words, wherein a priest receives his orders. "Receive the Holy Ghost, for the office and work of a priest in the Church of God; and be thou a faithful dispenser of the word of God, and of his Sacraments, in the name of the Father, of the Son, and of the Holy Ghost."

This crime therefore, when committed by a priest, is betraying that sacred trust reposed in him with his holy orders; it is forging the authority of God, it is assuming a superiority over the inspired writers, if not over him that inspired them.

The Doctor therefore, that is sensible (as he says) of the load of guilt and infamy the Charge of the Commons lays upon him, and whereof this is surely the heaviest part; what does he say to this?

He says, If he be guilty he is to answer it at another tribunal, where he is to be judged by those scriptures.

My lords, so he is to answer at that great tribunal for every branch of this present Charge.

But is this all? Is he negligent of his reputation in no other instance but this, that is the tenderest and most affecting?

Or will he thus give himself up for a falsifier of the Word of God, and yet have the confidence to hope for any reputation, or any capacity of doing good in preaching it?

Is it thus the dignity of the sacred order is to be supported?

Is this the cause of the Church, and of Christianity? And are they wound up in the fate of an impostor and false prophet?

Pardon the warmth of expression; his not saying a word to the Charge, owns all this.

My lords, it is true (as the Doctor has said) the Sacred Order, the Church and Christianity are concerned in this cause; but it is, that they may be cleared from the reproach brought upon them by this unhappy man.

But if he be self-condemned, if he dare not

open his mouth on this subject, how dare he declare his hopes, that those of your lordships, whose studies more particularly lead that way, should acquit him?

My lords, he has made an appearance before your lordships in a manner very extraordinary, not only as in a defence of a prosecution, but as in a most solemn act of devotion, before the most august judicature on earth, appealing to a yet greater in heaven.

But with what sincerity! what candour! or what sense of that which he has done!

I am amazed, that a person in holy orders, in his distinguished habit, before this awful assembly, should dare to take the tremendous name of God into his lips, and appeal to him for the sincerity and integrity of his heart, at that very time when he stands charged with this black crime, and is neither able to repel it, nor has the sincerity and honesty to repent, to take shame upon himself in the most public manner, and to ask pardon of God and the world for it.

But while he can thus, with such assurance as your lordships have seen, and now see, face out such a crime, and be equivocating and playing double with your lordships, with God Almighty, and his own conscience; what regard is to be had to his most solemn protestations? His manifest insincerity in this plain point leaves him no credit in any thing; and his having taken the Abjuration Oath, gives me not the least difficulty, after what I have observed of his more solemn oath before your lordships.

My lords, the just veneration we owe to the divine majesty, (for the Doctor's behaviour has made that now part of the case) the honour of Christianity, the Church and its holy orders, the security of the present establishment and the Protestant Succession, the safety of her majesty's person, the quiet of her government, the duty we owe to her as our sovereign, the gratitude for her most gracious administration, the honour of our prelates, the obligations we are under to prevent seditions and tumults, to undeceive the people, to quiet the minds of the Protestant Dissenters, and convince them the Toleration allowed them by law is not to be taken away from them, to secure at present, and transmit to our posterity (as far as in us lies) our religion and liberties, and vindicate the Revolution (which is the foundation on which they stand), and the glory of our late royal Deliverer, to whom, under God, we owed it; and to banish sedition from the pulpit, which is, and ever ought to be sacred to divine purposes, require the Commons to demand your lordships' judgment on this offender.

But, my lords, he observes so far rightly, that his punishment is not all we aim at.

No, my lords,—What we expect from your lordships' justice, is, the supporting our establishment, the preventing all attempts to sap its foundation, and answering those other great purposes I have mentioned; and I hope the clergy will be instructed, not to preach the doctrine of submission in such manner as to prepare the way to rebellion, but to follow the advice and example of my lord archbishop of York, rather than tread in the steps of Dr. Sacheverell.

And we doubt not, but that those to whom our proceedings have been so industriously misrepresented, will see and own the favour shewn to this man, in the manner of the Charge; and our care for the honour of the Church and clergy, in singling out for an example for these impious attempts against his country, him that now plainly appears the shame of his own order.

Lord *Nottingham.* My lords, I desire your opinion, whether I may propose a question to the judges here?

Thereupon the Lords, being moved to adjourn, adjourned to the House of Lords; and being returned, and seated as before, proclamation was made for silence.

Note, during this adjournment, the Lords on debate agreed, that the question should be proposed in Westminster-hall.*

Lord *Nottingham.* My lords, the question I humbly propose to your lordships, that my noble lord on the woolsack may propose to the reverend judges, is, Whether by the law of England, and constant practice in all prosecutions, by indictment or information for crimes and misdemeanors, by writing or speaking, the particular words, supposed to be criminal, must not be expressly specified in such indictment or information?

[Then the Lords were moved to adjourn, and accordingly adjourned to the House of Lords; and being returned, and seated as before, proclamation was made for silence.]

Lord Chancellor. I take it, the question that your lordships are of opinion to ask the judges for them to give an answer to, is, Whether by the law of England, and constant practice in all prosecutions, by indictment or information for crimes and misdemeanors, by writing or speaking, the particular words, supposed to be criminal, must not be expressly specified in such indictment or information?

Baron *Lovell.* My lords, I have always taken it to be so, and by constant experience we have practised it so, that all words and writings, which are supposed to be criminal, ought to be expressly mentioned in the information or indictment.

Just. *Dormer.* My lords, I am of opinion, that by the laws of England, and constant practice in all prosecutions, by indictment or information for crimes and misdemeanors, in writing or speaking, the particular words supposed to be criminal, ought to be specified in

* As to this, see 4 Hats. Prec. 281 (title Impeachment, chap. 3, art. 12,) and the Note. See, also, in this Collection, vol. 7, p. 143; vol. 13, p. 10, 11; and the Case of Warren Hastings as referred to by Mr. Hatsell in his Note.

such indictment or information, in the courts of Westminster-hall.

Baron *Bury*. My lords, I am of the same opinion with my brothers.

Just. *Tracy*. My lords, I am of the same opinion.

Just. *Gould*. My lords, I am of the same opinion. It is our practice in the King's-bench; and we specify the words in the indictment, or it is cause of demurrer.

Just. *Blencove*. My lords, I am of the same opinion with my brothers.

Just. *Powys*. My lords, I am of the same opinion.

Just. *Powell*. My lords, the law of England is certainly so.

Lord Chief Baron. My lords, I am of the same opinion.

L. C. J. *Trevor*. My lords, I am of the same opinion, that by the laws of England the words ought to be specified in the indictment or information.*

[Then the Lords adjourned to the House of Lords as before.]

Note, the Lords did not come again into Westminster-hall until Monday the 20th of this month of March; but in order to the delivery of their opinions, did on some of the intermediate days come to these following resolutions, viz.

Saturday, March 11.

Resolved by the Lords spiritual and temporal in parliament assembled, that this House will proceed to the determination of the Impeachment of Dr. Henry Sacheverell according to the law of the land, and the law and usage of parliament.

Tuesday, March 14.

It is resolved by the Lords spiritual and temporal in parliament assembled, that by the law and usage of parliament, in prosecutions by impeachments for High Crimes and Misdemeanors, by writing or speaking, the particular words supposed to be criminal are not necessary to be expressly specified in such impeachments.†

It is ordered by the Lords spiritual and temporal in parliament assembled, that on Thursday next, at 11 o'clock, this House shall proceed upon the Impeachment of Henry Sacheverell, Doctor in Divinity, Article by Article.

Thursday, March 16.

It is resolved by the Lords spiritual and temporal in parliament assembled, that the Commons have made good their first Article of Impeachment against Henry Sacheverell, Doctor in Divinity.

Friday, March 17.

The like questions were severally put concerning the second, third, and fourth Articles, and severally resolved in the affirmative.

It is resolved by the Lords spiritual and temporal in parliament assembled, that the Commons have made good the second, third and fourth Articles of their Impeachment against Henry Sacheverell, Doctor in Divinity.

Saturday, March 18.

It is ordered by the Lords spiritual and temporal in parliament assembled, that the question to be put to each lord in Westminster-hall shall be,

Is Henry Sacheverell, Doctor in Divinity, Guilty of High Crimes and Misdemeanors, charged on him by the Impeachment of the House of Commons? And the answer thereunto shall be Guilty, or Not Guilty, only.

Monday, March 20.

The Lords coming down from Westminster-hall, and being seated in the manner before-mentioned, proclamation was made by the serjeant at arms as follows:

Our sovereign lady the queen doth strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

Then another proclamation was made: Henry Sacheverell, Doctor in Divinity, come forth, save thee and thy bail, else thou forfeitest thy recognizance.

The Doctor appearing at the bar accordingly, with his counsel, as before:

Lord Chancellor. Your lordships having fully heard and considered of the evidence and arguments in this Case, have agreed upon a question, which is severally to be put to your lordships in the usual order. The question is this, that Dr. Henry Sacheverell is Guilty of High Crimes and Misdemeanors, charged on him by the Impeachment of the House of Commons.

Lord Chancellor. Lord Pelham, What is your lordship's opinion; is Dr. Henry Sacheverell Guilty of High Crimes and Misdemeanors, charged on him by the Impeachment of the House of Commons?

Lord Pelham, Guilty.

The same question was severally put to the rest, whose names and votes are as follow:

Lord Hervey, Guilty.
Lord Conway, Not Guilty.
Lord Guernsey, Not Guilty.
Lord Hallifax, Guilty.
Lord Haversham, Not Guilty.
Lord Herbert, Guilty.
Lord Weston, Not Guilty.
Lord Leimpster, Not Guilty.
Lord Guilford, Not Guilty.
Lord Stawell, Not Guilty.

* In Layer's Case, A. D. 1722, the judges without any doubt held that this opinion was wrong. See the debate in that Case, and the authorities therein cited.

† As to the difference in the degrees of exactness required in impeachments and indictments, see the Case of lord Wintoun, A. D. 1715.

Lord Dartmouth, Not Guilty.
Lord Ossulston, Guilty.
Lord Osborne, Not Guilty.
Lord Craven, Not Guilty.
Lord Cornwallis, Guilty.
Lord Berkeley of Stratton, Not Guilty.
Lord Lexington, Not Guilty.
Lord Rockingham, Guilty.
Lord Colepeper, Guilty.
Lord Byron, Guilty.
Lord Leigh, Not Guilty.
Lord Mohun, Guilty.
Lord Howard of Escrick, Not Guilty.
Lord Hunsdon, Guilty.
Lord Chandos, Not Guilty.
Lord North and Gray, Not Guilty.
Lord Paget, Guilty.
Lord Willoughby of Broke, Not Guilty.
Lord Fitzwalter, Guilty.
Lord Ferrers, Not Guilty.
Lord De la War, Guilty.
Bishop of St. Asaph, (Fleetwood) Guilty.
Bishop of Norwich, (Trimnell) Guilty.
Bishop of Chester, (Dawes) Not Guilty.
Bishop of Lincoln, (Wake) Guilty.
Bishop of Bath and Wells, (Hooper) Not Guilty.
Bishop of Oxford, (Talbot) Guilty.
Bishop of Peterborough, (Cumberland) Guilty.
Bishop of Ely, (Moore) Guilty.
Bishop of Sarum, (Burnet) (a) Guilty.
Bishop of Rochester, (Sprat) (b) Not Guilty.
Bishop of Durham, (Crew) Not Guilty.
Bishop of London, (Compton) (c) Not Guilty.
Lord Viscount Weymouth, Not Guilty.
Lord Viscount Say and Sele, Not Guilty.
Earl of Islay, Guilty.
Earl of Glasgow, Guilty.
Earl of Roseberry, Guilty.
Earl of Seafield, Guilty.
Earl of Orkney, Guilty.
Earl of Northesk, Not Guilty.
Earl of Leven, Guilty.
Earl of Wymes, Not Guilty.
Earl of Loudoun, Guilty.
Earl of Mar, Not Guilty.
Earl of Crawford, Guilty.
Earl of Cholmley, Guilty.
Earl Powlet, Not Guilty.
Earl of Wharton, Guilty.
Earl of Greenwich, Guilty.
Earl of Grantham, Guilty.
Earl of Jersey, Not Guilty.
Earl of Orford, Guilty.
Earl of Bradford, Guilty.
Earl of Warrington, Guilty.
Earl of Scarborough, Not Guilty.
Earl of Portland, Guilty.
Earl of Plymouth, Not Guilty.
Earl of Holderness, Guilty.
Earl of Abingdon, Not Guilty.

(a) See his Case, vol. 11, p. 1103.
(b) See his Case, vol. 12, p. 1051.
(c) See his Case, vol. 11, p. 1123.

Earl of Rochester, Not Guilty.
Earl of Nottingham, Not Guilty.
Earl of Berkeley, Guilty.
Earl of Yarmouth, Not Guilty.
Earl of Radnor, Guilty.
Earl of Sussex, Not Guilty.
Earl of Carlisle, Guilty.
Earl of Anglesey, Not Guilty.
Earl of Scarsdale, Not Guilty.
Earl of Sunderland, Guilty.
Earl of Thanet, Not Guilty.
Earl of Winchelsea, Guilty.
Earl of Stamford, Guilty.
Earl Rivers, Guilty.
Earl of Berkshire, Not Guilty.
Earl of Manchester, Guilty.
Earl of Westmorland, Guilty.
Earl of Denbigh, Not Guilty.
Earl of Northampton, Not Guilty.
Earl of Leicester, Guilty.
Earl of Bridgwater, Guilty.
Earl of Dorset and Middlesex, Guilty.
Earl of Lincoln, Guilty.
Earl of Pembroke, Not Guilty.
Earl of Derby, Guilty.
Marquis of Dorchester, Guilty.
Lord Chamberlain of the Houshold, Guilty.
Duke of Dover, Guilty.
Duke of Roxborough, Guilty.
Duke of Montrose, Guilty.
Duke Hamilton, Not Guilty.
Duke of Buckinghamshire, Not Guilty.
Duke of Bedford, Guilty.
Duke of Leeds, Not Guilty.
Duke of Shrewsbury, Not Guilty.
Duke Schomberg, Guilty.
Duke of Bolton, Guilty.
Duke of St. Albans, Guilty.
Duke of Northumberland, Not Guilty.
Duke of Beaufort, Not Guilty.
Duke of Ormond, Not Guilty.
Duke of Grafton, Guilty.
Duke of Richmond, Guilty.
Duke of Cleveland and Southampton, Guilty.
Lord Steward, Guilty.
Lord Privy Seal, Guilty.
Lord President, Guilty.
Lord Treasurer, Guilty.
Archbishop of York, (John Sharp) Not Guilty.
Lord Chancellor, Guilty.

Then some time being spent by the Lord Chancellor in numbering the opinions of the Lords:

Lord Chancellor. My lords, I have cast them up with as much exactness as I can; and I find that there are of your lordships present in all 121; of these 69 of your lordships have found Dr. Henry Sacheverell Guilty of the High Crimes and Misdemeanors charged on him by the Impeachment of the House of Commons, and 52 have found him Not Guilty.

Then Dr. Henry Sacheverell was brought to the bar, and kneeled till he was bid to stand up by the Lord Chancellor.

Lord Chancellor. Dr. Henry Sacheverell, the Lords having fully considered of your case, have found you Guilty of High Crimes and Misdemeanors, charged on you by the Impeachment of the House of Commons.

Dr. *Sacheverell.* My lords, one of your lordships' officers acquainted me, that it was your lordships' order, That neither I nor my counsel might have the privilege of standing at the bar, while your lordships were giving your opinions whether I was Guilty of the crimes laid to my charge; by which means I was prevented from offering several matters to your lordships' consideration in Arrest of Judgment, which I now beg leave to offer to your lordships' consideration, and I desire my counsel might be heard to them.

The first is, That no entire clause, sentence, or expression, contained in either of my Sermons or Dedications, is particularly set forth in my Impeachment, which I have already heard the judges declare to be necessary in all cases of indictments or informations.

I desire to add another exception, That the Impeachment is by the knights, citizens and burgesses, commissioners of shires and burghs, in the name of themselves and of all the Commons of Great Britain; but the Articles are only by the knights, citizens and burgesses, in the name of themselves and of all the Commons of Great Britain; which is neither agreeable to the Impeachment, nor to the title of the House of Commons since the happy Union.

Then the Lords adjourned to the House of Lords,

Where they took into consideration the matter moved by Dr. Sacheverell in Arrest of Judgment; and thereupon ordered,

That this House will, to-morrow, at eleven o'clock, take into consideration what Censure to pass upon the said Dr. Henry Sacheverell.

Tuesday, March 21.

The Lords, upon debate in the House of Lords, agreed upon the Judgment to be passed in this case upon Dr. Henry Sacheverell, in the form hereafter mentioned.

Wednesday, March 22.

A Message was sent to the House of Commons, to acquaint them, That the Lords are ready to give Judgment in the case of Henry Sacheverell, Doctor in Divinity, if they, with their Speaker, will come and demand the same.

Thursday, March 23.

A Message was brought from the House of Commons, to acquaint the House of Lords, That the House of Commons, with their Speaker, do intend immediately to come to the House of Lords, to demand Judgment against Dr. Henry Sacheverell; and therefore desire that the Painted Chamber, and passage to the House (of Lords) may be cleared.

The messengers were called in and told, the Lords would give order as desired.

Which was done accordingly.

Then the House of Lords adjourned during pleasure to robe.

And being resumed,

The Commons, with their Speaker, being present at the bar of the House of Lords,*

The deputy gentleman-usher of the Black Rod brought the prisoner to the bar, who after low obeisances made, kneeled, until the Lord Chancellor bid him stand up.

Then the *Speaker* said as followeth, viz.

My lords, the knights, citizens and burgesses in parliament assembled, in the name of themselves and of all the Commons of Great Britain, did at this bar impeach Dr. Henry Sacheverell of High Crimes and Misdemeanors, and did exhibit Articles of Impeachment against him, and have made good the same:

I do therefore, in the name of the knights, citizens and burgesses in parliament assembled, and of all the Commons of Great Britain, demand Judgment of your lordships against Dr.

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* Mr. Hatsell, on the authority of Speaker Arthur Onslow, has given the following circumstantial account of what occurred on this occasion:

"When the Speaker (sir Richard Onslow) went up with the House to demand Judgment against Dr. Sacheverell, as the Mace was going into the House of Lords before the Speaker, the Black Rod endeavoured to hinder it, by putting his black rod cross the door; on which the Speaker said, 'If he did not immediately 'take away the black rod, he would return to 'the House of Commons.' The Black Rod desired him to stay a little, and he would acquaint the Lords. The door was shut, and Mr. Speaker and the House staid without. After a little time the door was opened, and Mr. Speaker, with the Mace, went in. As Mr. Speaker was going to the bar, the Black Rod attempted to interpose himself between the Speaker and the Mace; upon which the Speaker said aloud, 'My lords, if you do not 'immediately order your Black Rod to go 'away, I will immediately return to the House 'of Commons.' Then Lord Chancellor Cowper directed the Black Rod to go from thence. Then Mr. Speaker, with the Mace, went up to the bar. The Black Rod was then ordered to bring the prisoner; and the Black Rod was going to put him on the right hand of Mr. Speaker, who, upon that, said, 'If you do not 'order the Black Rod to go with the prisoner 'on the left hand of me, at some distance, I 'will return to the House of Commons;' upon which the Lord Chancellor directed the Black Rod so to do; and then Mr. Speaker demanded the Judgment, and the Lord Chancellor accordingly pronounced sentence upon the prisoner, kneeling at the bar."

Mr. Hatsell notices, that "there is a memorandum to this purport, entered in the Journal of the House of Commons, 23rd March, 1709; but no mention is made of this transaction in the Lords' Journal." See 4 Hats. Prec. 293, (Note.)

Henry Sacheverell, for the said High Crimes and Misdemeanors.

Then the *Lord Chancellor* said,

Mr. Speaker, the Lords are now ready to proceed to Judgment in the case by you mentioned.

Dr. Sacheverell, the Lords having found you Guilty of High Crimes and Misdemeanors, charged on you by the Impeachment of the House of Commons; and you being thereupon admitted to the bar, and acquainted therewith, moved two things in Arrest of Judgment.

First, That no entire clause of either of the Books or Sermons referred to in the Impeachment, is specified, or particularly set forth, in any of the Articles of Impeachment.

Secondly, That in the title of the Articles exhibited by the Commons, the stile of the Commons run thus:

"The knights, citizens and burgesses in parliament assembled, in the name of themselves, and of all the Commons of Great Britain," &c. Omitting the words, commissioners of shires and burghs.

I am to acquaint you, that the Lords took these points into consideration.

1. And as to the first, they found,

That on occasion of the question before put to the judges in Westminster-hall in this case, and their answer thereto, their lordships had before fully debated and considered of that matter, and had come to the following Resolution:

That this House will proceed to the determination of the Impeachment of Dr. Henry Sacheverell, according to the law of the land, and the law and usage of parliament.

And after, to this Resolution;

That by the law and usage of parliament, in prosecutions by Impeachments for High Crimes and Misdemeanors, by writing or speaking, the particular words supposed to be criminal, are not necessary to be expressly specified in such impeachments.

So that, in their lordships' opinion, the law and usage of the high court of parliament being a part of the law of the land, and that usage not requiring the words should be expressly specified in impeachments, the answer of the judges, which related only to the course used in indictments and informations, does not in the least affect your case.

2. As to the second.

Their lordships finding, that in the Act made in the 6th year of her now majesty, "For rendering the Union of the two Kingdoms more entire and complete," the terms commissioners of shires and knights of the shires, commissioners of boroughs and burgesses, are used as synonymous terms, signifying the same thing; they were clearly of opinion, there can be no weight in that exception, and accordingly overruled the same; without entering into the further consideration, how far a mistake in the title of the Articles, would viciate or avoid an impeachment, if such a mistake had happened.

So that the Lords find themselves obliged by law to proceed to Judgment against you, which I am ordered to pronounce.

And in which you cannot but observe an extreme tenderness towards your character, as a minister of the Church of England.

Therefore this High Court doth adjudge as followeth,

'That you, Henry Sacheverell, Doctor in 'Divinity, shall be, and you are hereby en-'joined not to preach during the term of three 'years next ensuing.*

'That your two printed Sermons, referred to 'by the Impeachment of the House of Com-'mons, shall be burnt before the Royal Ex-'change in London, between the hours of one 'and two o'clock, on the 27th day of this in-'stant March, by the hands of the common 'hangman, in the presence of the lord mayor 'of the city of London, and the sheriffs of Lon-'don and Middlesex.'

Then the Speaker with the Commons returned to their House; and Dr. Sacheverell being withdrawn,

The House was adjourned during pleasure to unrobe.

The House was resumed.

It is ordered by the Lords Spiritual and Temporal in parliament assembled, that Dr. Henry Sacheverell's two printed Sermons, one preached at Derby assizes, and the other at St. Paul's, London, referred to by the Impeachment of the House of Commons, shall be burnt before the Royal-Exchange in London, between the hours of one and two of the clock, on the seven-and-twentieth day of this instant March, by the hands of the common hangman, in the presence of the lord mayor of the city of London, and the sheriffs of London and Middlesex,

To the Lord Mayor of the City of London, and the Sheriffs of London and Middlesex.

The House taking into consideration a Judg-

* Upon the expiration of the silence thus imposed upon him, Sacheverell preached at St. Saviour's Church, Southwark, a Sermon on Luke xxiii. 34, which he published with the title of "The Christian Triumph, or the Duty of Praying for our Enemies." Of this Sermon, Swift writes to Stella, "April 2, 1713, Dr. Sacheverell told us that the bookseller had given him 100*l.* for his sermon preached last Thursday, and intended to print 30,000. I believe he will be confoundedly bit, and will hardly sell one half. April 4. I have been reading Sacheverell's long dull sermon which he sent me. It is the first sermon since his suspension has expired, but not a word in it upon the occasion, except two or three remote hints." In a month after the expiration of the sentence upon Sacheverell not to preach, queen Anne gave him the rectory of St. Andrews, Holborn.

See in this Collection, vol. 8, pp. 1, 133.

ment and Decree of the University of Oxford, passed in their convocation the 21st of July, 1683, given in evidence by Dr. Henry Sacheverell at his Trial, upon the Impeachment of the House of Commons, and thereupon lately reprinted; It is resolved by the Lords Spiritual and Temporal in Parliament assembled, that the said Judgment and Decree contains in it several positions contrary to the constitution of this kingdom, and destructive to the Protestant Succession as by law established.

It is thereupon ordered by the Lords Spiritual and Temporal in Parliament assembled, that the said Judgment and Decree lately printed and published in a book or pamphlet, entitled, An entire Confutation of Mr. Hoadly's book of the Original of Government, taken from the London Gazette, published by authority; London, reprinted in the year 1710, shall be burnt by the hands of the common hangman, in the presence of the sheriffs of London and Middlesex; at the same time and place, when and where the Sermons of Dr. Henry Sacheverell are ordered to be burnt.

To the Sheriffs of London
and Middlesex.

It is ordered by the Lords Spiritual and Temporal in Parliament assembled, that the Lord High Chancellor of Great Britain do give order for the printing and publishing the Trial of Henry Sacheverell, Doctor in Divinity; and that no other person do presume to print the same. And further, that the last mentioned Resolution and Order agreed on this day, be printed at the end of the said Trial.

The Lord Haversham's Speech in the House of Lords, on the First Article of the Impeachment of Dr. Henry Sacheverell.

My lords, when I consider where this Impeachment first began, I cannot but think the design of it was very good; but whatever it was, in its first intendment, it is very evident, it has already produced very mischievous effects; it has created great disturbances in private families, and tumults among the people; and raised a ferment in the nation, that will not be laid by your lordships' judgment, let that be what it will. It has been a two-edged mischief; giving the Church on one side, and the Dissenter on the other, too just apprehension, that they are both in danger. Nor can this be wondered at, when your lordships have been told, by some of the managers, of a pretended divine right of the Church; and when it has been more than hinted by the managers of the House of Commons, that the clergy ought to be directed by the civil power what doctrine they should teach: Nay, when they have authoritatively taken upon them to interpret Scripture, and charged it as a crime upon a minister, that he had wrested several places of it to his own wicked intentions.

My lords, after so noble a Defence made for the Doctor by his counsel, and so great and moving an apology by himself, I should not trouble your lordships upon this occasion, were it not more in justification of myself, for the judgment I shall give, than for the sake of the Doctor, whose cause, I think, now stands in very little need of it.

I was, my lords, a sufferer in the late reign, as well as others; I was in the Convention-parliament, and in the Vote of Abdication; and am, at this day, of the same principle I was then; and yet, notwithstanding this, I am not ashamed to say to your lordships, that I think myself obliged, in justice, to acquit the Doctor from the charge brought against him in this Article. And though this may seem strange to some of your lordships, yet, I hope, it will not appear so very strange as to see bishops vote against their own doctrines, and Dissenters in the midst of a mob that are pulling down meeting-houses; especially, after the reasons I shall offer to your lordships for the support of my opinion.

I shall not trouble your lordships about the original of government, or the divers forms of it; your lordships heard that learnedly discoursed on by one of the managers of the House of Commons below: But there is one thing, my lords, that if my memory serves me right, that gentleman omitted, and it is a matter too that I take to be of the greatest consequence to any government whatsoever: I mean, the divine appointment, or institution of government itself; from which appointment it is, that men are obliged to obedience to the magistrate, not only for wrath, or fear of him, but for conscience-sake, for dread of a future punishment, which is the greatest security the magistrate has. And I the rather mention this, because of notions that some people have of late advanced of their own, (and have found their advantage too in so doing) of a discretionary obedience only; that is, in my opinion, whilst the government is for them, they will be for it; and think themselves bound to obey no longer. It is not necessary, to the proof of this divine authority, to fix the just time and place, when, and where, and how the knowledge of it was first communicated to mankind: It is enough, that we have it as expressly, as plainly, and as clearly declared, as can be put into words, that it is so.

There is another thing, my lords, that in general, I would mention to your lordships, before I come to the Article itself, which may otherwise be the occasion of some mistake in this debate; we are not now judging according to our notions of politics, or determining how far Resistance or Non-Resistance is lawful. It would be a strange rule of judgment, to find any man guilty for the sake of one's own private opinion, and for the establishing a doctrine which he likes, and his neighbour does not. But the only question before your lordships is, whether, and how far, the House of Commons have made good their Charge against the

Doctor? And, I take liberty to say plainly to your lordships, that, in my opinion, they have been very far from making good their Charge against him in this Article.

My lords, to prevent the least mistake, I shall read the words of the Article to your lordships, as they stand in the Impeachment.

"He, the said Henry Sacheverell, in his said Sermon preached at St. Paul's, doth suggest and maintain, that the necessary means used to bring about the said happy Revolution were odious and unjustifiable: that his late majesty, in his Declaration, disclaimed the least imputation of Resistance, and that to impute Resistance to the said Revolution, is to cast black and odious colours upon his late majesty and the said Revolution."

The Doctor in this Article is charged with having maintained, That the necessary means used to bring about the late happy Revolution were odious and unjustifiable. To support this, the Commons say, that having asserted the general proposition of the unlawfulness of resisting the supreme power, and not having excepted the particular case of Resistance that was made use of as a means to bring about the late happy Revolution; he does thereby reflect both upon the means, and upon the said Revolution. In answer to this, there have been two things insisted upon to your lordships, in behalf of the Doctor, by his counsel: First, That in cases of such a nature as this, the exception is always implied in the general rule; and there was a very unanswerable instance brought in proof of this, at least to most of your lordships; it was the Oath of Allegiance to king James. All those that took that oath, took it in general words, and yet such an extraordinary case as the Revolution was excepted, though not expressed by those that took that oath. The next was, the Doctor, say they, would have been justly more blamed, had he mentioned all the cases of exception, which extraordinary cases ought to answer for themselves, whenever they fall out.

And though, my lords, these two be a full answer, yet there are two things more, I think, with submission, may be added to it, which have not as yet been taken notice of.

The first is, my lords, That the proof against the Doctor is drawn by consequences of the Commons' own making, which he himself disowns; and I appeal to that reverend and learned bench, who are great masters of controversy, whether it is not an established rule amongst all learned men that have the least spark of ingenuity, that no man ought to be charged with consequences, let them appear to his adversary never so clearly and undeniably to follow from his assertion, when he himself denies those consequences. This is so known a maxim in all disputes between Protestants and Papists, and between Protestants themselves, that it cannot be denied. Now, the Doctor himself denying, as he does, that he had the least thought of including the Revolution under his general assertion, or that he applied his doctrine of Non-Resistance to that case, cannot, without the highest injustice, be charged with consequences which he himself utterly denies.

In the next place, it is impossible, in my opinion, to prove that Resistance was made use of as a means to bring about the late happy Revolution: and, consequently, is not within the Doctor's general maxim.

'Means,' my lords, is a relative term, and refers to some end; and the design of the prince of Orange in his coming hither, and of those that joined him when he was here, being to have the nation and rightful succession secured by a free parliament, it follows, that whatever force was at that time made use of, could not be made use of as a means to bring about an end which was never intended.

Far be it from me, my lords, to lessen the great undertaking to deliver us from Popery and arbitrary power; and though the glory of that enterprize is wholly attributed to king William, it is certain her present majesty had a share in it; however, that is forgotten: For, give me leave to say, that had not her majesty countenanced the undertaking of the prince of Orange with her assistance, in my opinion, the success had been very dubious.

Now, is it possible, my lords, to imagine, that it was ever the design of her majesty, or those that joined the prince of Orange, to take the crown off of king James's, and put it upon king William's head?

No, my lords; the avowed great design was quite otherwise, as appears by the Declaration itself, which was read below: It was to restore and secure our laws from the invasions that had been made upon them by arbitrary power: It was to secure that right which all the world knows the princess had to the succession of the crown, and to have every thing settled by a free parliament, and not to make a Revolution by dethroning king James. This the prince himself owns, when he says in his Declaration, 'he had no other design in coming hither, but a free parliament.'

My lords, I take it to be of most dangerous consequence, to judge any man by suggestions and innuendoes: Let what will be said to justify it, it shall never be the rule of my judgment.

Groundless suggestions, my lords, have, within my memory, been the pretence of power, to cover illegal oppression with the shew of reason, to the public. I will give your lordships but one instance of it: It was the case of a reverend prelate, now in the House; I mean the archbishop of York; his grace was then Dr. Sharpe only. It was in the year eighty-six; there was an order, directed by way of letter to the Protestant bishops, to discharge all the inferior clergy from preaching upon controverted points in divinity. They thought it served the designs of Popery, then to direct ministers how they should preach; which was, in effect, to forbid them to defend their religion. This precedent was taken from an

order in queen Mary's time, says the printed account; when at the same time, it was attacked by the Romish priests with all the vigour they were capable of, whilst the Popish sermons and discourses were printed by authority. Notwithstanding this order, the Doctor took occasion, in some of his sermons, to vindicate the Church of England, in opposition to the frauds and corruptions of Popery. But this, by the court emissaries, was interpreted much the same way as the Doctor's Sermon is now, to be endeavouring to beget in the minds of his hearers an ill opinion of the king and his government, by insinuating fears and jealousies, to dispose them to discontent, and to lead them into schism, disobedience, and rebellion.

My lords, when the homilies and articles, when so many archbishops and bishops, and the university, and most of the foreign divines too, especially the Lutherans, have asserted the same doctrine of Non-Resistance to the supreme power, as Doctor Sacheverell has; I think it the hardest case in the world, that this unfortunate gentleman should thus be singled out and made a criminal, and a kind of martyr, enduring the trial of cruel mockings, yea, moreover, of bonds and imprisonment, for asserting the same doctrine. It is true, Beza and Pareus, and some others of the Calvinists, are of another opinion; but it is known, that Pareus's Commentary on the 13th of the Romans was burnt at Oxford, by the order of king James 1, for asserting that doctrine.

But there is one thing, my lords, so astonishing in this prosecution, that I cannot but take notice of it: Those who were at man's estate at the Revolution know how industrious, on the one side, all that were friends to king James were, to put his leaving the nation then upon the foot of force and resistance, as thinking this the strongest and best argument to justify his withdrawing himself from his people. They racked their brains to find out arguments to convince men, that his life was manifestly in danger by staying here; and that it was for the sake of that, and his liberty, that he was forced to withdraw; and that his withdrawing was just, being an act of necessity, and not of choice.

On the other side, those that were friends to the Revolution, made it their business to persuade the world, that all this was but a colour and pretence, and that the fact was quite otherwise; that the sense and conviction king James had of what he had done, prevailed upon him rather to throw off the government, than concur with a free parliament.

That this was the only foot they then put it upon; and that it was not then put upon the foot of forfeiting the government by mal-administration; if any man denies, I appeal to the papers that were then writ, and are now in print, on this subject.

This being so, it is very strange to see so great an alteration in men's notions of things; and that now, after our constitution has maintained itself upon this foot, against all designs and attempts that have been made upon it, for above twenty years, those very men, and that party, who endeavoured to place the Revolution then, upon king James's voluntary desertion, which they called Abdication, should now, without any reason given, be for changing that foundation, and do all they can to put it upon king James's foot of force and resistance. What, my lords, are we endeavouring, after twenty years, to make king James's title better now than any of his friends could make it then, and not only finding out arguments they never thought of, but impeaching any that dare so much as question the truth and force of them? this, my lords, seems very strange.

My lords, I cannot but take notice to your lordships of what was said by that noble lord, who spoke last, because to me it appears to be a matter of the last consequence to the honour of her present majesty. He told your lordships, that the best title her majesty had to the crown, was her parliamentary title. I must take liberty to affirm the quite contrary; and that, in my opinion, the best title her majesty has, is her hereditary title; though I deny not, but that the act of parliament is a strengthening and confirmation of that title: but I deny a parliamentary title to be the only, or the best title that the queen has to the crown she wears. And in saying this, I do not fear the malicious reflections of having a squinting regard to the title of any person on the other side the water; for in affirming (as I now do to your lordships) that her majesty is my rightful and lawful queen by right of inheritance; and as she is daughter to king James the second, I do in so many words affirm also, that there is no other person the rightful and lawful heir to king James but herself. And if the present Impeachment of Dr. Sacheverell shall have this effect (as I hope it will) to convince the nation of the undoubted truth of her majesty's right of inheritance to the crown, (a matter now so industriously opposed) the security this will bring to her majesty's person and crown, and to the Succession in the Protestant Line, and illustrious House of Hanover afterwards, shall prevail with me easily to pardon any warm and unguarded expressions that the Doctor may here and there have dropt, and made use of in any of his discourses.

The Bishop of Salisbury's Speech* in the House of Lords, on the First Article of the Impeachment of Dr. Henry Sacheverell.

The counsel for the prisoner did so plainly and fully yield all that any loyal subject has ever pretended to, that in cases of extreme necessity self-defence and resistance were lawful, and that this was the case at the Revolution; that it may not be necessary to say any thing

* Dr. Gilbert Burnet.

further on this head, if it had not been that the evidence they brought seemed to carry this matter much farther, and that the prisoner himself allowed of no exception in cases of necessity. And since it is grown to be a vulgar opinion, that by the doctrine of the Church of England, all Resistance in any case whatsoever, without exception, is condemned; I think it is incumbent on me, who have examined this matter long and carefully, to give you such a clear account of this point, as may as fully satisfy you as it did myself.

I served in the Revolution, and promoted it all I could. I served as chaplain to the late king: I had no command, and carried no arms, but I was so far engaged in it, that if I could see that I had gone out of the way in that (and the many up-and-downs we have gone through since, has given much occasion to reflect on that transaction), I should hold myself unworthy to appear longer, either in this habit, or in this great assembly; but should think myself bound to pass away the rest of my life in retirement, or sorrow. There is nothing more certain in religion, than that we ought to repent of every sin we have committed; and that we cannot truly repent, unless we repair or restore as far as it is in our power.

I go now to give you the account of the doctrine of our Church in this particular. In the times of Popery it was a tenet, built upon bishops setting the crown on the heads of princes, and anointing them, that they held their crowns of the Church, and at the Pope's mercy, who had for about five hundred years got into the claim of deposing them, and giving their dominions to others, in case they were heretics, or the favourers of them. But the Reformation being in its first beginning protected by the princes of Germany, by the kings of the North, and then by the kings of England; they came every-where in opposition to the papal notions, to say that kings had their power from God: not that they meant, that they had any distinct authority besides the law of the land derived to them from God; but that by the laws of God, the authority of the law of the land was secured to them. For when a different authority from that of the law came to be pretended to, and to be grounded on these general expressions, that received here a parliamentary censure, and it was then declared, that the laws of religion in the Scripture did only establish the several constitutions and governments that were in the different parts of the world.

The occasion that the Apostles had to write what we find in their Epistles, with relation to government, was this: The Jews had a notion among them, from a passage in Deuteronomy, that they were only to set a king over them, 'One from among their brethren, and not a 'stranger.' From whence it is, that to this day they do not think they are bound in conscience to obey any magistrate who is not one of their nation. Now the first converts to Christianity being Jews, the Apostles took care that they should not bring this dangerous notion with them into the Christian religion: but they did not meddle to determine where this authority was lodged, that was to be gathered out of the several constitutions: they did not determine how much was due to the emperor, and how much to the senate; and though not long after those Epistles were writ, the senate condemned Nero to die *more majorum*, to be whipped to death, none of the Christians interposed in that matter. He prevented that infamous death by his own hands: and the primitive Christians reckoned it one of the articles of the glory of their religion, that their first persecutor came to such an end.

Not long after that Trajan was famed for that memorable expression, when he delivered the sword to the governors of the provinces as the emblem of their authority, he used these words, "Pro me, si merear, in me:" For me, but if I deserve it, against me. That did not weaken his authority; his government, with that of his successors for above eighty years, being the greatest and happiest time the Romans had under their emperors. This word was put on king James the first's coin in Scotland. It is true, that was during his minority; but when he afterwards changed his motto, the coin was not called in, but continued current till the Union.

The primitive Christians had no laws in their favour, but many against them: so their patient suffering so many persecutions, according to the laws of the empire under which they lived, was conform to the doctrine laid down by the Apostles. When they came afterwards to have the protection of laws, they claimed the benefit of them, not without great violence, when they thought an infraction was made on those laws; which broke out into great tumults, in many of the chief cities of the empire, not excepting the imperial city itself.

But to proceed with the history of our Church: when the Articles of Religion were settled, the books of the Apocrypha were indeed declared not to be a part of the canon of the Scripture, but yet to be useful for the example of life, and the instruction of manners. A great part of these are the books of the Maccabees, which contain the history of the Jews shaking off the yoke of the king of Syria, when they were broke in upon by a total overthrow of their whole law, and an unrelenting persecution. Mattathias, a private priest, began the Resistance, which was carried on by his children, till they shook off the Syrian yoke, and formed themselves into a free government under the family of the Maccabees. It were easy to shew that the Jews had been for above 400 years subject, first to the Babylonian, then to the Persian, and at last to the Grecian empire: so that by a long prescription they were subjects to the kings of Syria. It were easy also to shew, that this Resistance was foretold by Daniel, in terms of high commendation, and is also mentioned in the Epistle to the

Hebrews, as the work and effect of their faith.

If then all Resistance to illegal and barbarous persecution is unlawful, these books contain nothing but a history of a rebellion, and all the devotion that runs through them, is but a cant, and instead of reading them as examples of life, and instruction of manners, we ought to tear them out of our Bibles with detestation. I shall afterwards shew what use was made of these books, not only by private writers of our Church, but by what the whole body in convocation was about to determine.

The next step to be made, is to consider the Homilies. The second book of Homilies, which has the Homilies in it against wilful rebellion, is generally believed to have been composed by bishop Jewell, who was by much the best writer in that time. It is certain, he understood the meaning of them well: Now I will read you two passages out of his Defence of his Apology for the Church of England; from whence we may clearly gather what his notion of rebellion was, and that he thought a defence against unjust and illegal violence was not rebellion. In one place he has these words:

"The nobles of Scotland neither drew the sword, nor attempted war against the prince: They sought only the continuance of God's undoubted truths, and the defence of their own lives against your barbarous and cruel invasions: They remembered besides all other warnings, your late dealings at Vassy, where great numbers of their brethren were murdered, being together at their prayers in the Church, holding up their innocent hands to heaven, and calling upon God." In another place he writes, "Neither do any of all these (Luther Melanchthon) teach the people to rebel against their prince, but only to defend themselves by all lawful means against oppressions; as did David against Saul, so do the nobles in France at this day, they seek not to kill, but to save their own lives."

These passages shew, that he looked on rebellion to be a violent rising against a prince executing the laws; which was the case of the three rebellions in England that they had in view: That in king Henry the 8th's, in king Edward's, and in queen Elizabeth's time, where the Papists took arms against their prince, who was executing laws made in matters of religion, and that with a great gentleness. Of the eleven passages quoted by the prisoner out of the Homilies, five plainly relate only to the coercing the person of the prince, in which David is set in opposition to those rebels: Now, though he indeed defended himself, yet he had a just and sacred tenderness to the person of Saul, when he had him in his power, which is certainly sacred by our constitution. Five of them relate to wicked princes. It was never pretended by any who pleaded for necessary defence, that the bad life of a prince can be a just cause of Resistance: Yet that was then pretended; for king Henry 8, had given too much occasion to reckon him a wicked prince. So there is only one of all the passages quoted from those Homilies, that relates simply to rebellion in general: And it has appeared what bishop Jewell's sense of the matter was. There is also a prayer at the end of every division of the Homily against wilful rebellion, (and, by the bye, wilful was not put in the title for nothing) for those oppressed by tyranny in other parts, that they might be relieved, and that those who were in fear of their cruelty might be comforted.

Let us next look through queen Elizabeth's long and glorious reign, and see what was the constant maxim of that time.

The year after the queen came to the crown, the war in Scotland broke out between the queen regent that governed by commission from her daughter then queen of France, and the lords in Scotland. She, to obtain the matrimonial crown to be sent to Francis 2, gave assurances for the exercise of the reformed religion; but the point being gained, she broke all her promises, and resolved to force them to return to the exercise of the Popish religion. Upon which the lords of Scotland formed themselves into a body, and were called the lords of the congregation. Forces were sent from France to assist the queen regent; upon that queen Elizabeth entered into an agreement with the Scottish lords, and sent an army to their assistance, which continued in Scotland till all matters were settled by the pacification of Leith: And in a manifesto, that I have in my hands, set forth twenty-five years after that, I find her reflecting on that interposition in the affairs of that nation, with great satisfaction.

The year after this war was ended, upon Francis the 2d's death, Charles the 9th, who was a child, succeeded in France. Edicts were granted in favour of the Protestants: These were soon after broken by the triumvirate, and upon that followed a series of wars often pacified, but always breaking out again, by reason of the violence and cruelty of the government. All these wars, till Henry the 4th was settled on the throne, were in a course of twenty-eight years; that which some would call rebellion, being carried on against two succeeding kings. Yet the queen was in all that time still assisting them with men and money.

In the year 1568, the provinces in the Netherlands threw off the Spanish yoke, that was become intolerably severe and cruel. The queen for some years assisted them more covertly, but when the prince of Orange was killed, and they were in danger to be over-run, she took them more openly into her protection: and by the manifesto which I have in my hands, she published the grounds upon which she proceeded. She laid down this for a foundation, that there had been an ancient league not only between the crown of England, and the princes of the Netherlands, but between the subjects of both countries, under their seals interchangeably, for all friendly offices. If this was a good reason for the queen's giving aid to

the oppressed people of the Netherlands, then if the case had been reversed, that the people of England had been illegally and cruelly oppressed, it furnished the princes of those provinces with as good a reason for assisting them. In this assistance given the states, the queen persisted till the end of her reign; nor was this only done by the court, but both parliaments and convocations granted her several aids to maintain these wars: And in the preambles of those subsidy-acts, the queen's proceedings in those particulars were highly approved and magnified. Bilson, bishop of Winchester, and several other writers in that time, justified what she did; and not one that I never heard of censured or condemned it.

Upon king James's coming to the crown, the first great negociation was for a peace between Spain and the United Provinces; which lasted several years. The States insisted on a preliminary, that they should be acknowledged free, sovereign and independent States; the Spaniards would not yield to this, nor would the States recede from it. Some here in England began to say, they were formed in rebellion, and ought not to carry their pretensions too far. Upon that, king James suffered a convocation to meet; and a Book of Canons, with relation to the supreme authority, was prepared; in which, though the authority of the prince, even when he becomes a tyrant, is carried very far; yet the case of the Maccabees is stated; and, it was determined, that when a new government, though begun in a revolt, is come to a thorough settlement, it may be owned as lawful. King James, who was jealous enough of the regal authority, yet did not like their carrying these matters so far: He ordered the whole matter to be let fall so entirely, that there is not a word of it in the Books of Convocation: But archbishop Sancroft found this collection of Canons at Durham, under Dr. Overhall's hand, which he copied out, and licensed the book a few days before he fell under his suspension. I soon saw that it had a relation to the affairs in Holland: For the Dutch delighted to compare their first beginnings to that of the Jews in Antiochus's time: They compared king Philip to Antiochus Epiphanes, and the prince of Orange to Judas Maccabeus. But I saw much clearer into the matter by an original letter of king James, which a worthy gentleman sent me. I knew his hand well, the letter is in print; but I will read some particulars out of it. It is directed to Dr. Abbot, afterwards archbishop of Canterbury. It begun with censuring some positions concerning a king in possession, the same with our modern term of a king *de facto*: He goes on in these words, "My reason of calling you together, was to give your judgments, how far a Christian and a Protestant king, may concur to assist his neighbours to shake off their obedience to their own sovereign, upon the account of oppression, tyranny, or what else you like to name it. In the late queen's time, this kingdom was very free in assisting the Hollanders both with arms and advice; and none of your coat ever told me, that any scrupled about it in her reign. Upon my coming to England, you may know it came from some of yourselves to raise scruples about this matter; yet I never took any notice of these scruples, till the affairs of Spain and Holland forced me to it. I called my clergy together, to satisfy not so much me, as the world about us, of the justness of my owning the Hollanders at this time. This I needed not to have done, and you have forced me to say, I wish I had not." He reflects on those who had a great aversion to the notion of God's being the author of sin, which plainly points at Dr. Overhall, who was the first man of note among us, that opposed the Calvinists' doctrine of predestination; yet he says, "They had gone to the threshold of it, by saying, that even tyranny was God's authority, and should be reverenced as such." He concludes, "These were edged tools, and that therefore they were to let them rest." Here is a full account of King James's thoughts of this matter, which was then the chief subject of discourse all Europe over. He had twelve years before this shewed, on an eminent occasion, that he owned the states, when he invited them in the year 1593, to christen his eldest son, prince Henry. They were sensible of the great honour done them by it; and though they were then but low, they sent an embassy, with a noble present of gold plate, to assist on that occasion. This negociation stuck for several years, the Spaniards refusing to own them in express words: The temper found was, they were treated with *(tanquam)* as with free states; and the matter went no further at that time, than a truce for some years, which was concluded in the year 1609. This lets us see, that the words in king James's speech that year to his parliament, were not chance words that fell carelessly from him, "A king leaves to be a king, and degenerates into a tyrant, as soon as he leaves off to govern by law: In which case the king's conscience may speak to him, as the poor woman to Philip of Macedon, Either govern by law, or cease to be a king."

There is another eminent instance towards the end of that reign, that shews what the sense of our best divines was in this matter: When the archbishop of York's son and Mr. Wadsworth had changed their religion in Spain, Wadsworth writ over a bold defence of that; and among other things, charged the Reformation with rebellion. This was answered by one of the best books of that time, writ by Dr. Bedell, dedicated to the prince of Wales, who afterwards promoted him to a bishopric. His words on this head are full: I will read some of them. "Do you think subjects are bound to give their throats to be cut by their fellow-subjects, or to their prince, at their mere wills, against their own laws and edicts? You would know *quo jure* the Protestant wars in France and Holland are justified. First, the law of nature, which not only alloweth, but inclineth and inforceth every living thing to defend itself

from violence. Secondly, that of nations, which permitteth those who are in the protection of others, to whom they owe no more than an honourable acknowledgment, in case they go about to make themselves absolute sovereigns, and to usurp their liberty, to resist and stand for the same. And if a lawful prince, who is not yet lord of his subjects' lives and goods, shall attempt to despoil them of the same, under colour of reducing them to his own religion, after all humble remonstrances, they may stand upon their own guard, and being assailed, resist force with force, as did the Maccabees under Antiochus. In which case notwithstanding, the person of the prince himself ought always to be sacred and inviolable, as was Saul to David." No commentary is wanted here.

My lords, you see how this matter stood during king James's reign. In the first year of king Charles's reign, Grotius's book 'de Jure 'Belli et Pacis,' was published at Paris, dedicated to the king of France, while France was under the administration of the wisest and most jealous minister of the last age, cardinal Richlieu. In that book, in which he asserts the rights of princes with great zeal, yet he enumerates many cases, in which it is lawful to resist, particularly that of a total subversion: And that book is now all Europe over in the highest reputation of any book that the modern ages have produced. In the beginning of king Charles's reign, a war broke out in France against the Protestants; upon which he sent over ambassadors, by whose mediation a peace was concluded; but that being ill kept, the war broke out again; and the king thought himself bound by his mediation to protect the Protestants. So in the second session of the parliament, 1621, in the demand of a Supply that the lord keeper Coventry made in the king's name, these words are to be found: "France is swayed by the Popish faction; and though by his majesty's mediation, there were Articles of Agreement between that king and his subjects, that treaty hath been broke, and those of the reformed religion will be ruined without present help." Upon this the Commons petitioned the king for a fast, and desired the concurrence of the Lords, who joined with them in it. The king granted it, and an office was composed suitable to the occasion; in which, among other devotions, the nation was directed to pray for all those, "who here or elsewhere were fighting God's battles and defending his altars." Thus the whole body of the legislature did concur for a fast for that, which, if this doctrine is true, was no better than rebellion; and yet the whole nation, clergy, and laity, were required to pray for success in it.

But to complete this view of the doctrine of our Church, it is to be considered, That when a year before this, while the loan or benevolence were carried on, some officious divines made use of those expressions of kings having their power from God, as importing an authority of a nature superior to the laws of the land. One of these, Dr. Manwaring, was impeached, and had a severe sentence passed on him for it. So I have now made it out, beyond, I hope, the possibility of contradiction, that for seventy years together, from 1558, to 1628, the lawfulness of self-defence in the case of illegal and violent cruelty, was the public and constant doctrine of this Church.

These were the best and happiest times of our Church, as is often repeated by the earl of Clarendon: From these we ought to take the standard of our doctrine.

I go next to shew what was the common doctrine for the next sixty years, from 1628, to 1688. I must yield up the first twelve years: For upon the unhappy misunderstanding between the king and that parliament, there was a long discontinuance of parliaments, then the lately condemned doctrine was again in vogue; and nothing was so much heard of, as the law of government that was from God, antecedent to all human laws: Out of this sprung illegal imprisonments, illegal monopolies, severe proceedings in the Star-Chamber, but above all, the Ship-money. These things put the nation in an universal disjointing and feebleness, and when an unavoidable necessity forced that king to call a parliament, the fatal effects of those counsels broke out terribly. I know many fancy, that the war is to be charged on the principles of self defence: They are much mistaken. I had occasion to see a great way into the secret of that time, when I examined the papers relating to the two dukes of Hamilton. I know a great deal more since from two persons of unquestionable integrity, who knew the secrets of that time, the lord Hollis, and sir Hardbottle Grimstone; but all received a confirmation, when I found it agreed perfectly with the noble account given by the earl of Clarendon.

Nobody dreamt of a war, nor had they any principles leading to it. But there was an unhappy train of accidents that hindered matters from being brought to a settlement, even while the king was granting all they could desire. Stories were carried by persons about both the king and queen, or words let fall, that made them conclude, there were still ill designs on foot against the laws that were then passed. But that which brought all to a crisis, was the discovery of a negociation to engage the army to declare against the parliament. Whosoever compares the depositions in Rushworth, with the account given of that matter by the earl of Clarendon, will see there is a great deal more in the one, than the other is willing to believe; though he acknowledges they had both Goring's evidence, and Piercy's letter with them. I will not take it upon me to determine, whether they believed too much, or the earl of Clarendon too little. It is certain they believed all that was in the depositions, and a great deal more: For Goring being continued in the government of Portsmouth, and his father being advanced from being a baron to be an earl, and Piercy's being made a lord and master of the horse to the prince of Wales, made them

conclude they had suppressed a great deal, instead of saying more than was true. This stuck deep in their hearts, and at last fatally broke out in the demand of the militia, that brought on the war, which I do own was plainly a rebellion; because a force was offered to the king, not to defend themselves from an unjust invasion, or illegal grievances, but to extort a new law from him.

Thus the true occasion of the war was a jealousy, that a conduct of fifteen years had given too much ground for: and that was still unhappily kept up by a fatal train of errors, in every step that was made. The great concussion that the war gave the nation, and the barbarous effusion of so much blood, especially of the royal blood of that blessed king; had at last a happy, though a late conclusion in the Restoration: And it is no wonder, if such a series of tragical events begot a general horror at the occasion of them. But then it was, that had it not been for the firmness of the earl of Clarendon to his English principles, the liberties of the nation had been delivered up.

It is to his memory that we owe our being a free people; for he, with his two great friends, the duke of Ormond and the earl of Southampton, checked the forwardness of some who were desirous to load the crown with prerogative and revenue. He stopt all this, which being afterwards odiously represented, brought on him that great and lasting, but honourable disgrace. The earl of Southampton, whose death went a little before his fall, and perhaps hastened it the sooner, said to many about him, that he was a true Protestant, and an honest Englishman; and that the nation would feel the effects of his being removed, whensoever it might happen.

That lord, in the great settlement after the Restoration, would carry things no farther than to repeal what had been extorted by the tumults; and in the matter of the Militia-act, and the oaths relating to it, all was more cautiously worded than is commonly understood. To the word 'commissioned by the king,' some indeed moved, that the word lawfully might be added to make all plain. This was pressed in the Commons by Vaughan, afterwards Lord Chief Justice of the Common Pleas. The Attorney General, afterwards Lord Chancellor Nottingham, answered, that was not necessary, for the word 'commission' imported it; since it was not lawfully issued out to lawful persons, and for a lawful reason, it was no commission; and the whole House assented to this: Yet in the House of Lords, the same word 'lawfully' was pressed to be added by the earl of Southampton, who was answered by the earl of Anglesey, to the same purpose with what had been said in the House of Commons. He indeed insisted to have the word added, because it would clear all difficulties with many, who not having heard of the sense given in both Houses, might fancy, that any sort of commission being granted, it would not be lawful to resist it. He did not prevail: For it was said, that this explanation being the sense of both Houses, it would be soon spread and known over the nation. In this sense, it is certain, that it is not lawful to take arms against any so commissioned by the king: for that were to take arms against the king's commission in the execution of the law, which is certainly a resisting the ordinance of God, which whosoever do, they shall receive to themselves damnation.

It was no wonder, if after such a war the doctrine of Non-Resistance was preached and pressed with more than ordinary warmth, and without any exceptions; yet some still kept these in view: So did both Dr. Falkner and myself; and I know many others had them always in their thoughts, though they did not think it necessary to mention them.

I found the ill effects that the carrying this matter so far had on the mind of that unfortunate prince king James; for in the year 1673, when he was pleased to admit me to much free conversation with him, among many other things, I told him it was impossible for him to reign in quiet in this nation, being of that religion: he answered me quick, Does not the Church of England maintain the Doctrine of Non-Resistance and Passive Obedience? I begged him not to depend on that; for there was a distinction in that matter, that would be found out when men thought they needed it. I now come to tell your lordships how right I judged.

It is true, they passed a very pompous decree at Oxford in 1683; but you shall hear how long they stood to it. In summer, 1686, the Prince of Orange was pleased to receive me into his service with a particular confidence.

Soon after the ecclesiastical commission was set up, and upon some proceedings before that board, he was desired from England to break with king James upon that head. I opposed this, and said, I was convinced that commission was against law, and would have ill effects; but it did not strike at the whole. This was more warmly pressed upon the proceedings against Magdalen College. I still stood to my ground; and told both prince and princess, that if a breach should follow on these matters, I could not serve. When, indeed, the Declaration was published a second time, with a resolution to have it carried through; and that many laws were dispensed with at pleasure; and persons who were under legal disabilities, were made judges, sheriffs, and magistrates; all whose actings were so many nullities: then I thought there was a total subversion of our constitution; which from being a legal one, was made precarious, subject to mere will and pleasure. So I was ready to serve in the Revolution.

Some days after we came to Exeter, sir Edward Seymour came thither, and he presently sent for me: when I came to him, he asked me, why were we a rope of sand, and had not an association? I said, because we had not yet a man of his weight to begin the motion: he said, if we had not one by tomorrow, he would leave us before night. I

presently saw a noble duke, now in my eye, and acquainted him with this: he went to the prince, who approving of it, an Association was prepared, and laid on the table next morning; and was after that signed by all who came to wait on the Prince. Three days after we left Exeter, a head of the College came to the Prince, to invite him to come to Oxford, assuring him, that the university would declare for him. He went as near it as Abingdon; but then the sudden turn of affairs at London obliged him to haste up, the Association was sent thither, and was signed by the heads of the colleges, and many others there; some doing it in a particular warmth of expression, and saying, that their hearts as well as their hands went with it. Upon what disappointments or other views, I cannot tell, this contradiction to their famed Decree, five years after it was made, seemed to take another turn back to it again; and the notion of a king *de facto*, which is but a softer word for an usurper, came in vogue.

The parliament, to prevent the ill effects of that, studied to secure the government, first, by an Association, and then by an Abjuration. I, who was always against every thing that might break in upon conscience, was for making these only voluntary; but they were enacted, and they were generally taken. A noble lord on the earls' bench procured me the sight of a letter, that went about to persuade the taking the Abjuration, that he had from a place where he believed it had its effect; where I found this distinction, that the abjuring any right whatsoever that the Pretender might claim, was only meant of a legal right, and that it had no relation to birth-right, or to divine right. This agreed with a report that went then current. That a person, in a great post, sent a message to an honourable gentleman who would not take the Abjuration, that if he had an half hour's discourse with him, he doubted not to be able to convince him, that he might take the Abjuration without departing from any of his principles. Towards the end of the last reign, a bold attempt was made on the king's supremacy, by an incendiary, who is supposed to have no small share in this matter now before your lordships: but the attack on the supremacy being liable to a præmunire, it was turned with much malice, and managed with great prevarication against the bishops, who adhered firmly to their duty to the king.

How great a disjointing that has brought on this Church, is too visible all the nation over; and it tends to carry on the wicked design of distracting the Church, and undermining the government.

By the time the queen was on the throne, or soon after, the Rehearsal began to be spread over the nation, two of them a week, which continued for several years together, to be published without check or controul. It was all through one argument against the queen's right to the crown: that, though it was diversified with incidents and digressions, was kept always in view. The clergy were in many places drawn into subscriptions for this paper.

This looked like a design long connived at, to have the queen's title undermined: besides this, we had a swarm of pamphlets every year to the same purpose, and, as was believed, writ by the same hand. One sold at the door of the House, with the title of 'King William's Exorbitant Grants,' did plainly call him an usurper: and starting an objection against the queen's possessing the throne, gave it this answer, that she did well to keep it till she could deliver it up to the righteous heir. At that time there was a quick prosecution of a paper, published, with the title of 'the Shortest Way with the Dissenters;' and upon that, I brought that pamphlet to a great minister, and offered to shew him this passage in it, to see if there should be a prosecution of this ordered. He turned from me; so whether he heard me or not, I cannot tell; I am sure if he says he did not, I will believe him. No prosecution followed, and the Rehearsal went on. The clergy in many places met at a coffee-house on Saturdays, to read the Rehearsals of the week, which had very ill effects in most places. I know it may be said, that the queen's learned counsel ought to have looked after these things: but we all know, that they stay till they receive orders from the ministry. The course of that treasonable paper has been now for some time stopt, so we see there is some change in the ministry.

But to complete the insolence of the enemies of the queen and of the Protestant Succession, they had the impudence to give it out, that the queen secretly favoured them. And as this, we all know, has been long whispered about among us, so it was more boldly given out in Scotland; which obliged one of the queen's ministers in that parliament, in a speech that was printed, to contradict this treasonable and dishonourable suggestion, that as some divines would have it, that there was in God a secret as well as revealed will, and that these might be contrary to one another; so they would fasten an imputation on the queen, that while she revealed her will one way, she had a secret will another way; which he solemnly affirmed to be false, and highly injurious to the queen.

While the pamphlets and these reports were thus set about, Mr. Hoadly thought that it became him to assert the queen's title, by justifying the Revolution, out of which it rises.

But what an out-cry was raised on this, that one durst disturb the progress of a wicked opinion, that was visibly designed to overturn the government? And yet he asserted nothing but what the counsel for the prisoner did all fully and plainly own, that in the cases of extreme necessity, an exception to the doctrine was to be admitted, and that that was the case at the Revolution.

But as these notions have been long let run among us, so they have appeared in a most violent and unguarded manner, ever since the attempt of the Pretender; and more of late,

since the preliminaries upon the overtures for a peace, seem to extinguish their hopes. What sermons on this head are preached in this city, at assizes, at Bath, and at many cathedrals? Furious men fit themselves with some hot sermons, which they carry about from place to place, to poison the nation. This has not only the visible effect designed by it, of shaking many in their allegiance to the queen, and in their adhering to the Protestant Succession; but it has a cursed effect on many others, on whom this their design does not succeed.

I am very sensible there is a great deal of impiety and infidelity now spread through the nation: this gives every good mind all possible horror; but I must tell your lordships, on what a great part of it is founded: for since my conversation with Wilmot, earl of Rochester, I have had many occasions to discourse with persons tainted with those wicked principles; and I do affirm it, that the greatest prejudice these persons have at religion, at the clergy, and at the public worship of God, is this, that they say they see clergymen take oaths, and use all prayers, both ordinary and extraordinary, for the government, and yet in their actings and discourses, and of late in their sermons, they shew visibly that they look another way: from whence they conclude, they are a mercenary sort of people without conscience.

I hope there are not many that are so corrupted and so scandalous: I am sure I know a great many that are far otherwise, who preach, speak and act as they swear and pray; but those who act in another way, are noisy and impudent, and so bring an imputation on the whole body. And unless an effectual stop is put to this distemper, it is not possible to foresee all the ill consequences that may follow upon it.

I have, I am afraid, wearied your lordships; but I thought it was necessary, once for all, to enlarge copiously on this argument. And now to come close to the Article, and the Sermon, for I meddle not at all with the person of the man, whatever general expressions might very well have been used, in setting forth Passive Obedience and Non-Resistance before the Revolution; because odious cases ought not to be supposed, and therefore are not to be named, yet since Resistance was used in the Revolution, and that the late king invited all the subjects to join with him, which was in them certainly Resistance; and since the lawfulness of the Revolution is so much controverted, the condemning all Resistance in such crude and general terms, is certainly a condemning the Revolution. And this is further aggravated from those limitations on our obedience, in an Act passed soon after the Revolution, by which, in case our princes turn Papists, or marry Papists, the subjects are in express words discharged from their allegiance to them. Certainly this puts an end to the notion of Non-Resistance in any case, or on any pretence whatsoever. For these reasons, I think the first Article of this Impeachment is both well grounded, and fully made out.

The Bishop of Oxford's* Speech in the House of Lords, on the First Article of the Impeachment of Dr. Henry Sacheverell.

My lords; some of this bench are necessarily called up, by words which fell from the noble lord who spake third in this debate, who was pleased to mention, among other strange things, bishops voting contrary to their doctrines. The opinions of several of the reverend prelates have been read before your lordships in Westminster-hall: they were first quoted by the counsel for the defendant, and by their order read in such a partial and unfair manner, that if I may be allowed to use any other author after the same way, to take a naked proposition out of his book, and not consider the coherence or dependance of the words, how it may be explained or limited in other places, to read just so far as may serve my purpose, and stop when any thing follows that may set the matter in a just light, I dare undertake to make any author speak on whichever side of the question I please.

But the managers for the honourable House of Commons did justice to those reverend prelates, by obliging the clerk to read other passages in their books, which clearly explained their opinions; and so the only purpose that was eventually served by producing those quotations, was that which, I fear, was not intended; the vindicating those reverend prelates from the uncharitable imputation of having asserted a doctrine in their writings, which they had contradicted by their practices, in relation to the Revolution, and the government founded upon it.

I hope to be able to reconcile the vote which I shall give, with the opinion which I have always been of, and which having not been produced below, I stand up to give it your lordships here; being far from censuring, far from entertaining the least disrespectful thought of any that shall differ in opinion from me.

I own the subject now in debate is a matter of great consequence, and of great nicety and tenderness; and that he, who should presume to entertain your lordships upon it, ought to be better qualified, and better prepared than I am in other respects; but I will give place to none in those that follow, viz. in delivering myself with that respect and deference which is due to this House, that humble diffidence which becomes a just consciousness of my own weakness, and that plainness and sincerity which becomes that character, which, however unworthy of it, I have the honour

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* Dr. William Talbot.

to bear; and then I am sure I may depend upon your lordships' known candour, honour and justice, that if any thing should fall from me less correct, or less guarded than it ought to be, it shall receive the most favourable construction that it is capable of.

Before I deliver my opinion, I beg leave briefly to state the question; and in order to that, to lay down two premises.

1. That government in general, was in its original institution designed for the good of the whole body. Men were not formed into societies, only to be subjects of the arbitrary wills, the slavish instruments in the gratifying the ambitious or other corrupt designs of any one or more men; but for the safety and prosperity of the whole community.

2. That in the Holy Scriptures (as far as I can find) there is no specification of any one particular form of government to which all nations and bodies of men, in all times and places, ought to be subject; nor are there any such exact accounts of the extent of the power of the governor, or obedience and submission of the governed, as can reach to all cases that may possibly happen.

There are many general precepts requiring the obedience and submission of subjects to their governors: "Let every soul be subject to the higher powers: you must needs be subject not only for wrath, but also for conscience-sake: he that resists, resists the ordinance of God: and submit yourselves to every human constitution for the Lord's sake," &c.

But yet these Scriptures do not tell us how far we must obey and be subject, nor do they necessarily imply that there can never be any cases wherein we may not obey and not be subject, but resist; because there are other places in Scripture, where other duties are required in terms as large and general as these, nay in universal terms, which yet must admit of exceptions.

Some of the most zealous contenders for the absolute power of the prince, and unconditional submission of the subject, found themselves very much upon the fifth commandment, 'honour thy father and mother,' which they expound as comprehending political as well as natural parents; and I do not gain-say it: but then, pray my lords, let us see in what terms the duty of children to their natural parents is required in Scripture? Children, says the Apostle, 'obey your parents in all things.' This expression is surely universal enough; and from hence, according to some men's reasoning, it must follow, if children must obey their parents in all things, then they may resist in none.

But will any body say, that notwithstanding the universality of this precept, there may not be some exceptions and limitations understood, both as to the active and passive part of the child's obedience? As to the active, no one will deny, but the command must be restrained to *licita et honesta;* they are not to obey in all things absolutely, but in all things that are lawful and honest.

And as to the passive part of the child's obedience, the submission or Non-Resistance required, permit me to put a case: suppose a parent in a frenzy, in a fit of drunkenness or passion, draws his sword, and attempts to kill his innocent son, and the son had no way to escape from him: is he obliged by this duty of not resisting, to stand still, and let his father sheath his sword in his bowels? May he not, though he must still have a care of his father's life, defend his own? May he not put by the pass, grapple with his father, and disarm him if he can? My lords, surely he may; that prime law of nature, of self-preservation, will justify him in it: and then why may not the same law of self-preservation justify the political child, the body of the people, in defending their political life, i. e. their constitution, against plain and avowed attempts of the political parent utterly to destroy it? And it is upon this point only that I shall state the question.

I do allow, that in all governments whatsoever, there is an absolute power lodged somewhere. With us, as I humbly conceive, that power is lodged in the legislature; for which I have the authority of a great politician and statesman, sir Thomas Smith, who was secretary of state to two princes, king Edward 6, and queen Elizabeth; who in his book, De Republica Angl. a book seen and allowed, as is said in the title-page, in that chapter where he treats of our parliaments, and the authority thereof, lays down this assertion, "The most high and absolute power of the realm of England consisteth in the parliament." And giving particular instances of that power, among others, mention this, "That the parliament gives form of succession to the crown."

The executive power with us is lodged with the prince; and I do readily allow, that the prince so vested with the executive power, and all others lawfully commissioned by him, acting according to their commission, and within those laws with the execution whereof he and they are respectively trusted, are irresistible: the person of the prince is always inviolable; no personal faults in him; no injuries to particular persons, where they can have no redress by law, as in several cases they may have; no general mal-administration, whereby the public may be greatly hurt, can justify any forcible Resistance of his subjects; nor any thing else than a total subversion of the constitution.

But if in a legal monarchy, where such laws have been enacted by common consent of prince and people, as are to be the measures of his government, as well as of their obedience, that limit his power, as well as secure their rights and properties, the prince shall change this form of government into an absolute tyranny, set aside those laws, and set up an arbitrary will in the room of them: when the case is plain, and when all applications and attempts of other kinds prove unsuccessful; if then the no-

lies and Commons join together in defence of their ancient constitution, government and laws, I cannot call them rebels. Allow me, my lords, to lay before you a few things in maintenance of what I have advanced. And,

1. I would humbly offer some facts, which I allow do not directly prove what I have said to be true, but they do prove it to have been the opinion of our princes, parliaments, clergy and people, in the reign of those three great princes, queen Elizabeth, king James and king Charles 1. I mean the assistance which those princes gave to the subjects of other countries that were resisting their respective princes; and to enable them to do so, they had subsidies given them in parliament and convocation——, and there were prayers composed and used for the success of their arms.

Surely, my lords, if those princes, parliaments, clergy and people, had been of opinion that the Resistance of subjects against their princes was in no case lawful, but always damnable rebellion; they would never by aiding and assisting such rebels have involved themselves in the guilt, and exposed themselves to the dangerous consequences of such a sin. I mention not the particular stories, because they are better known to your lordships than to me, and because I doubt not but in the course of this debate, some lord or other will give a larger account of them. But I cannot forbear observing one thing relating to that assistance, which that pious prince, and now glorious saint in heaven king Charles 1, gave to the Rochellers, who were surely the subjects of the king of France: he ordered a fast by proclamation, and appointed a form of prayer to be drawn up for the imploring of God's blessing. It is highly probable, that bishop Laud had the great hand in composing those prayers, he being then bishop of London, and in great favour, and the archbishop of Canterbury, Abbot, at that time in disgrace. But whoever composed them, I beg leave to read part of one of the collects in that office; "O Lord God of Hosts, that givest victory in the day of battle, and deliverance in the time of trouble, we beseech thee to strengthen the hands, and encourage the hearts of thy servants, in fighting thy battles, and defending thy altars that are among us, and in all the reformed churches." It seems the reformed churches were thought to have God's altars among them then, however they have been vilified since. But that which I would observe from this passage, is this, That neither that excellent king who commanded those prayers to be composed, nor the bishops who composed them, nor the clergy and people who used and joined in them, could in so solemn a manner have recommended those forces to the divine protection and favour, and as such as were fighting God's battles, if they had thought they were fighting against God in his vicegerent; and as defending his altars, if they believed they were resisting his ordinance.

2. I could produce several authorities in support of what I have laid down, but I shall mention but one: it is in a book written professedly on this subject, and the passage I shall quote comes home in point to the matter in hand. The book was written in queen Elizabeth's time: every one that is acquainted with the history of her reign, knows what attempts were made by the Pope and his party against her government and life, by excommunicating, deposing her, absolving her subjects from their allegiance, by raising tumults and insurrections, by dagger, poison, and what not: and it is certain, that they were these wicked practices of the Pope and his followers, and the doctrines by which they justified them, that the compilers of the homilies, which were then made, and other authors, who then wrote about the power of the prince, and the duty of the subject, had principally in their view. The book I mean, is entitled, The True Difference between Christian Subjection and Unchristian Rebellion. It is written by way of dialogue between a Christian, whom the author calls Theophilus, and a Jesuit whom he calls Philander. I beg leave to read a quotation out of it. Theophilus the Christian says, "I busy not myself in other men's commonwealths as you (the Jesuits) do, neither will I rashly pronounce all that resist to be rebels: cases may fall out even in Christian kingdoms, where the people may plead their right against their prince, and not be charged with rebellion." Philander the Jesuit asks, "As when, for example?" Theophilus the Christian replies thus: "If a prince should go about to subject his kingdom to a foreign realm, or change the form of the commonwealth from impery to tyranny, or neglect the laws established by common consent of prince and people, to execute his own pleasure; in these and other cases, which might be named, if the Nobles and Commons join together to defend their ancient and accustomed liberty, regiment and laws, they may not well be accounted rebels." This book is said, in the titlepage, to have been perused and allowed by public authority; was written by a great man, Dr. Bilson,* then warden of Winchester College; printed at Oxford by the University printer, and dedicated to queen Elizabeth; and the author was afterwards made bishop of Winchester. I could offer many other authorities, not from false sons, or perfidious prelates of the Church, not from men of factious and antimonarchical principles in relation to the state; but venerable names, ornaments to the ages they lived in, and such as will be remembered with honour in succeeding ones: but I am superseded in producing, and your lordships' trouble saved in hearing more particular quotations to this purpose, by what is yielded by a reverend divine of great parts and learning, far enough from the suspicion of being prejudiced against the rights of princes, or partial to those of the people; I mean the reverend dean of

* Of this Bishop, see some particulars in the Case of lord and lady Essex, vol. 2, p. 785.

Carlisle, who in a Latin discourse preached† and printed in this town upon the duty of Submission, stating some cases of extreme necessity, and putting the question, "Whether it may not be lawful for the people in such cases to resist?" answers, Viri boni et graves, &c. "That good and judicious men, that have taken great and useful pains in defending the rights of princes, and repressing popular licence, have contended that it is lawful:" He adds indeed, "Whether they have done right or wrong, let others judge;" and does not give his own opinion. But since he has granted, that such men as he has described, men of probity and judgment, zealous assertors of the rights of princes, and repressors of popular licence, have contended, that in cases of extreme necessity it is lawful for the people to defend themselves; I may comfort myself, if I err in my opinion, that I err in good company. But I humbly conceive I do not err; and that,

3. For this plain reason, That if it be utterly unlawful to resist in any case whatsoever, even that of a total subversion of the constitution and laws; then there is no distinction of governments, of absolute, I mean, and limited; or if there be a distinction, it is a nominal one, without any real difference. For what difference is there between a prince's governing arbitrarily without law, and governing arbitrarily against law? betwixt having no laws at all, and having precarious laws that depend entirely on the will of the prince, whether he will observe one of them, or subvert them all; and if he does, the people cannot help themselves?

But, my lords, I hope and believe that there is a real distinction of governments, and that the subjects, of all governments are not in the same wretched condition that those of France and Turkey are in. I hope we have not boasted falsely or vainly of our form of government, that we are blessed with a constitution more happy than any other nation in the world enjoys, that allows and secures as great, and (I had almost said) god-like powers and prerogatives to the crown, as any wise and good prince can desire; a power of doing every thing that is good, and nothing that is ill; and at the same time secures most valuable rights and privileges to the people.

What wise or good prince would not rather chuse to reign over free subjects, than tyrannize over slaves? To receive a willing, cheerful obedience, proceeding from the principles of gratitude, love and interest, as well as of duty, rather than a forced one, owing merely to a principle of fear, the principle from whence the Indians worship the evil spirits?

My lords, such a frame of government your lordships have received from your ancestors; and I hope and trust, that in grateful respect to their memory, and in tender regard to your posterity, (I say nothing of ourselves, my lords; for as for us who have the happiness to live under the government of the best of princes that ever heaven blessed a nation with: for us, I say, were our government as arbitrary as any in the East, yet I should think our rights, liberties and properties, and whatever is most dear and valuable to us, as safe if they depended entirely upon her majesty's gracious will, as they are now they are secured to us by our laws, or stronger fences, if they could be made) but I speak in regard to those that are to come after us: And I do hope and trust, that as your lordships have received such an inestimable treasure from your predecessors, you will transmit it inviolably to your posterity. My lords, I fear I tire you, but I must beg your patience a little longer, while I express my surprize and wonder that the doctrine of Passive Obedience and Non-Resistance, in the unlimited extent in which some explain it, is so diligently inculcated, and so zealously pressed at this time.

Passive Obedience, I own, when truly stated, is a truly Christian duty; a perpetual duty as to the obligation, but occasional as to the practice of it. Now preachers do not usually, neglecting the pressing of other duties of more constant practice, lay out their time and labour in filling both pages of their discourses with earnest assertions and violent exhortations to the practice of an occasional duty, unless they have some near prospect of an occasion for the exercise of it. And yet, my lords, has this one duty been of late more frequently and earnestly asserted and urged, both from pulpit and press, than all the other duties of Christianity? And what occasion for this does any one pretend to have in view?

Can there be a wretch so abandoned, so lost to all sense of gratitude, and every thing that is good, as to be capable of admitting a thought, that our gracious queen has done, is doing, or intending to do any thing, that may give her subjects occasion for the practice of this duty: Has she not, ever since her happy accession to the throne, postponed, sacrificed her own repose and ease to the quiet and happiness of her subjects? Has she not clearly shown that she has nothing so much at heart as the good and prosperity of her people, the true interest and honour of her kingdom, which she has carried higher than any of her royal predecessors ever did before her? Has she not approved herself a true parent of her political children, by exercising as prudent a care of, and expressing on all occasions as tender an indulgence to them, as any natural parents ever did towards theirs?

If then there be no occasion from the conduct of our prince, is there any reason from the behaviour of her people that may justify this extraordinary and otherwise unreasonable zeal for this doctrine? Do they (excepting such as the zealots for this doctrine have excited to disturb her peaceful reign at home, by rebellious and dangerous tumults and insurrections) shew any uneasiness under her majesty's government, or inclination to throw it off? Do they not bless their glorious queen, and God

† I suppose a 'Concio ad clerum,' preached by Atterbury to the Convocation.

for her? Do they not on all occasions express their grateful sense of the many inestimable blessings they enjoy through her administration? Do they not constantly offer up their devout prayers to God for her long life and happy reign? Do they not willingly pay their taxes for the support of her government, cheerfully expend their treasure and blood too in defence of it?

What then can be said for such a conduct, which can have no other natural tendency than to create unreasonable jealousies of her people in the head of our queen, and groundless fears of their queen in the hearts of her people? Jealousies in the queen, that her subjects are inclinable to rebel against her, when the clergy think it necessary thus to press these restraints upon them; and fears in the people when their pastors are so industriously preparing them for sufferings.

My lords, I would not be thought to charge upon all that hold and assert this doctrine, the consequences which I may with too much reason charge upon some of them; I mean such as do not allow her majesty's title to the crown, but refuse to take the oaths to her, or join in prayer for her, and have upon that account formed one of the most unaccountable schisms that ever was made in the Church. Some of these have engaged zealously in asserting this doctrine; and one of them, in a paper written in vindication of it, has not been afraid to insinuate a parallel between the case of her majesty and the Pretender, and that of Athaliah and Joash.

Horrid suggestion, that would make one tremble! What do these men mean? Any service to her majesty? No; the consequences as to them are plain. If to resist upon any occasion whatever be unlawful, be rebellion, damnable rebellion; then the Revolution was rebellion, and all that were concerned in it are involved in that guilt; then we have continued in a rebellion ever since; then if we would avoid damnation, we must repent of that sin: but there is no true repentance without restitution; and if there must be restitution, they will tell you what that is.

I would charitably hope, that the unfortunate person now in judgment before your lordships, did not intend to carry matters so far: but I must say, his doctrine as he has stated and managed it, under his head of False Brotherhood with relation to the state, does give too great a handle for those that have such views, to improve what he has said to their purposes.

The counsel for him have laboured to defend him against the charge in this Article, by producing a great many quotations out of the Homilies, Statutes, and Writings of divines dead and living, wherein this doctrine has been laid down generally. They all allowed that cases of extreme necessity were always excepted out of this general doctrine; and that though the exception was not expressed, yet it was always implied; and they allowed farther, that the case of the Revolution was a case of such necessity: but how did they apply this to the case of their client? Thus: they said, that those divines whom they had quoted, were never found fault with for asserting the doctrine in general terms, not expressing but tacitly implying the exception: then they asked, Why should the Doctor be charged for asserting the doctrine in general terms, as others had done, not expressing the exception which they had not expressed? Why should not he be intitled to the favourable construction of tacitly implying the exception of cases of necessity, such a necessity as they allowed justified the Revolution?

Indeed I should readily have admitted the plea, if the Doctor had done no more than barely assert the doctrine in general terms, and his only fault had been that he had not expressed the exception which he tacitly implied: but has he done no more than this? Has he not mentioned the case of the Revolution, with no other view, as I can see, than to expose it; not as an exception out of his general position, but an objection against it? Our adversaries, says he, that is, those that oppose his general doctrine, think they have us sure, *i. e.* effectually confute that doctrine, by objecting the Revolution. This objection must suppose that there was Resistance at the Revolution; for to say that the general doctrine, that it is not lawful in any case to resist, is not true, because the Revolution was lawful, in which there was no Resistance, would be a wonderful objection indeed: I say, Resistance must be supposed in the objection, to make sense of it. How then does he solve this objection? Does he say, the general doctrine always implies an exception of cases of necessity? That the Revolution was a case of such necessity, and therefore that necessity justified the Resistance at the Revolution; no, but by advancing a strange position (which he proves by as strange a medium) viz. 'That there was no Resistance at the Revolution:' plainly implying, that if there was Resistance at the Revolution, which every body knows there was, the Revolution stands condemned by his general doctrine. So that I cannot see that his learned counsel, who wanted neither abilities nor inclinations to serve him, have at all defended him against the Charge in this Article. But this they have effectually done, they have given up his general doctrine, if it admits of no exceptions; and thereby cleared the Revolution, and the necessary means whereby it was brought about, from those black and odious colours which he endeavoured to cast upon them.

After all, I can truly appeal to my own heart, and a greater than it, the Searcher of it, that I am not any ways prejudiced against the person of the unhappy prisoner, but rather in favour of him, as I am of all men in his suffering circumstances, by a natural tenderness (it may be a weakness, but such a one as I cannot help,) which never suffers me, however obliged in

justice to it, to do a hard thing to any one, however deserving it, without doing at the same time a hard thing to myself: and if your lordships should be of opinion, in the conclusion of this Trial, that the Commons have made good their Charge against him, I am sure I could come into as easy a sentence upon him as may be consistent with the honour and justice of your proceedings, and with that which I take to be the chief end of all punishments, not so much the hurting the offender, as the preventing the like offences and hindering others from committing them for the future.

But still, my lords, there is surely a tenderness and compassion due to our queen, our country, and our posterity; all which, I humbly apprehend, are highly concerned in the issue of this affair.

If clergymen may with impunity publicly in their sermons arraign and condemn the Revolution; besides the reflections they cast upon all the worthy patriots that were concerned in that great work, the commonalty, gentry, and nobility, lords upon every bench in this House; besides this, it must shake, it must sap the very foundation of our present establishment, as it stands upon the foot of the Revolution, and utterly destroy our future hopes in the Protestant Succession, which is founded upon that bottom only.

My lords, I must humbly ask pardon for having trespassed so long upon your patience, and will conclude with this one word, That in my opinion, these practisings of clergymen (to use the expression of a great and eminent prelate) in state matters, are of that dangerous tendency and consequence, that if there be not some effectual stop put to these practisings, these practisings will, in time, put an effectual end to our constitution.

The Commons had therefore reason to bring this matter in judgment before your lordships, and I think they have fully made good their Charge in the first Article of their Impeachment against Dr. Sacheverell.

The Bishop of Lincoln's* Speech to the House of Lords, March 17th, at the Opening of the Second Article of the Impeachment against Dr. Sacheverell.

My lords; It was the misfortune of some of our bench, that in the prosecution of the foregoing Article of this Impeachment, a noble lord, who spoke very early to that point, was pleased not only to anticipate our judgment in that particular; but to do it with this pretty hard reflection, that in giving it, as he supposed we would, we should vote contrary to our own doctrine. It is not improbable but that, in the course of the present debate, another arrow may be drawn out of the same* quiver to shoot at us; and we may be told, that in defending of the † Toleration granted by law to the Dissenters, we shew ourselves to be apostates from our own order. But from both these imputations, I am persuaded, both our writing, and our actions, will secure us in the judgment of all indifferent persons.

The substance of this second Article of the Impeachment, which your lordships are now about to enter upon, is this: "That Dr. Sacheverell in his Sermon doth suggest and maintain, that the Toleration granted by law is unreasonable, and the allowance of it unwarrantable. That he is a False Brother with relation to God, religion, or the Church, who defends Toleration and Liberty of Conscience. That queen Elizabeth was deluded by archbishop Grindall to the Toleration of the Genevian discipline: And that it is the duty of superior pastors to thunder out their ecclesiastical anathemas against persons entitled to the benefit of the Toleration; and insolently dares, or defies any power on earth to reverse such sentences." This, my lords, is the sum of this part of the Commons' charge against Dr. Sacheverell, and I think the managers have fully made it out; not by bare intendments, by unnecessary implications, and forced constructions; not by piecing together broken sentences, and conjoining of distant and independent passages (as he has unjustly complained;) but by the plain words, and necessary meaning, of a very great part of his discourse.

But before I trouble your lordships with the proof of this, give me leave, upon this occasion, (though it be no part of the Impeachment laid against the preacher) to observe to your lordships, what a strange account he has thought fit to publish of that other popular engine, which, he says, has been made use of ‡ to pull down the Church, and which he calls by the name of Comprehension.

The person who first conceived this supposed design against our Church, was the late most reverend Dr. Sancroft, then archbishop of Canterbury. The time was towards the end of that unhappy reign, of which so much was said upon the occasion of the foregoing Article. Then, when we were in the height of our labours, defending the Church of England against the assaults of Popery, and thought of nothing else; that wise prelate, foreseeing some such Revolution as soon after was happily brought about, began to consider how utterly unprepared they had been at the restoration of king Charles 2, to settle many things to the advantage of the Church; and what a happy opportunity had been lost for want of such a previous care, as he was therefore desirous should

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* Dr. William Wake. *Former Edition.*

* See Dr. Sacheverell's Answer to the 1st Article of Impeachment. His Speech, fol: pag. 23. *Former Edition.*

† Dr. Sacheverell's Sermon at St. Paul's, page 8. *Former Edition.*

‡ Serm. pag. 16, 17. *Former Edition.*

now be taken for the better and more perfect establishment of it. It was visible to all the nation, that the more moderate Dissenters were generally so well satisfied with that stand which our divines had made against Popery, and the many unanswerable treatises they had published in confutation of it, as to express an unusual readiness to come in to us. And it was therefore thought worth the while, when they were deliberating about those other matters, to consider at the same time what might be done to gain them, without doing any prejudice to ourselves.

The scheme was laid out, and the several parts of it were committed, not only with the approbation but by the direction of that great prelate, to such of our divines as were thought the most proper to be entrusted with it. His grace took one part to himself; another was committed to the then pious and reverend * dean, afterwards a bishop of our Church. The reviewing of the daily service of our liturgy, and the communion-book, was referred to a select number of excellent persons, two† of which are at this time upon our bench; and I am sure will bear witness to the truth of my relation. The design was, in short, this: To improve, and if possible, to inforce, our discipline; to review and enlarge our liturgy; by correcting of some things, by adding of others; and if it should be thought advisable by authority, when this matter should come to be legally considered, first in convocation, then in parliament, by leaving some few ceremonies, confessed to be indifferent in their natures, as indifferent in their usage, so as not to be necessarily observed by those who made a scruple of them; till they should be able to overcome either their weaknesses or prejudices, and be willing to comply with them.

How far this good design was not only known to, but approved of by, the other fathers of our Church, that famous petition, for which seven of them were sent to the Tower, and which contributed so much to our deliverance, may suffice to shew. The "willingness there declared of coming to such a temper as should be thought fit with the Dissenters, when that matter should be considered and settled in parliament and convocation;" manifestly referred to what was then known to several, if not all, of the subscribers, to have been at that very time under deliberation. And that nothing more was intended than I before said, is as evident from what was publicly declared in a treatise purposely written to recommend the design, when it was brought before the two Houses of Parliament, in the beginning of the late reign; and licenced by the authority of a noble peer, now present, who was at that time secretary of state: In the very beginning of which there is this remarkable passage, which I shall beg leave to read to your lordships: "No alteration, that I know of, is intended, but in things declared to be alterable by the Church itself. And if things alterable be altered upon the grounds of prudence and charity; and things defective be supplied; and things abused be restored to their proper use; and things of a more than ordinary composition revised and improved; whilst the doctrine, government and worship of the Church remain intire, in all the substantial parts of them; we have all reason to believe that this will be so far from injuring the Church, that, on the contrary, it shall receive a very great benefit by it."*

And now, my lords, let any impartial person consider, what was there in such a design that could be justly esteemed prejudicial to the constitution of our Church? Wherein would our canons have suffered, if those already made had been more strongly enforced; and some new ones had been added, for the reformation of manners; for the better punishing of notorious offenders; and to render our public discipline more strict and severe? This we have been wishing for ever since the Reformation. What harm would it have done our Church, had it now been effected? Or how would our excellent liturgy have been the worse, if a few more doubtful expressions had been changed for plainer and clearer; and a passage or two, which, however capable of a just defence, yet in many cases seem harsh to some even of our own communion, had either been wholly left at liberty in such cases, to be omitted altogether; or been so qualified as to remove all exception against them in any case? If such collects, as are not yet adapted to the festivals or gospels to which they belong, had been made more full, and apposite to both; if some of the occasional offices had been enlarged, and new ones added: If, for example, there had been a greater variety of prayers, psalms and lessons appointed by authority, instead of the compositions of private persons, now necessarily to be used, for the visitation of the sick; and new forms composed for the use of prisoners for debt or crimes: For the greater solemnity of receiving proselytes into our Church; of reconciling penitents to it; and of casting notorious offenders out of it: These were some of the main things that were then designed. As for any favour to the Dissenters, none that I know of was intended, but what should have been entirely consistent with our own constitution:

And I hope it will not be thought any crime for the bishops and clergy of our Church to be willing to enlarge its communion, by any methods which may be likely to gain others, and yet not injure our own establishment.

But to satisfy your lordships that nothing could have been designed to the detriment of the Church; be pleased farther to consider,

* Dr. Patrick, bishop of Ely. *Former Edit.*

† The archbishop of York and bishop of Ely. *Former Edition.*

* A Letter to a member of parliament in favour of the Bill for uniting Protestants: Licenced by the command of the earl of Shrewsbury, April 1, 1689. Ja. Vernon, pag. 2. *Former Edition.*

how what was thus at first projected in private, by select persons, and in a difficult time, when no countenance was to be expected from authority to any such purpose, was afterwards, if ever, to have been brought to maturity? And this being a matter of public notice, the relation of it will admit of no exception.

No sooner were their late majesties, of glorious memory seated in their thrones but this design was openly espoused by them. A commission was issued out, under the great seal of England, to a large number of bishops and other eminent divines, to meet together, and to consider of these matters. What they did, having not had the honour to be one of them, I shall not presume to say. This we know, that whatever they did, it was to have been carried on from them to the two convocations of Canterbury and York: And after it should have passed their approbations, it was finally to have been laid before the two Houses of Parliament, and so to have gone on to the royal assent. This, my lords, was the course through which all that was designed, or should have been done in this matter, must have passed: And I am persuaded nothing very injurious to our Church's welfare will ever be able to pass through all these.

Having thus given your lordships a true account of that design which Dr. Sacheverell mentions under the name of Comprehension, I doubt not but that your lordships will now be amazed to hear, what a false and scandalous report he has made of it. In the 16th page of his Sermon he thus speaks of it: "The worst adversaries of our Church says he, were to be let into her bowels under the holy umbrage of sons; who neither believed her faith; owned her mission; submitted to her discipline; or complied with her liturgy. For the admitting of this Trojan horse, big with arms and ruin, into our holy city, the straight gate was to be laid quite open; her walls and enclosures to be pulled down; and a high road made in upon her communion. Her articles to be taught the confusion of all senses, nations, and languages."

This my lords, is a very strange representation of so good a design as that I before recounted to your lordships. Yet this representation did this bold man, as confidently, as falsly, make of it in the House of God, and publish to the view of the whole nation. For thus he goes on: "This pious design of making our house of prayer a den of thieves, of reforming our Church into a chaos, is well known to have been attempted several times in this kingdom, and lately within our memory, when all things seemed to favour it; but that good Providence which so happily interposed against the ruin of our Church, and blasted the long projected scheme of these ecclesiastical Achitophels." To say nothing more of the design itself, of which I have given an account before; pray, my lords, who were the Achitophels that projected it, and must have concurred to the execution of it? I have already named the first and chiefest of them, the late archbishop Sancroft. The next who openly approved of it were the commissioners who met upon it in the Jerusalem-Chamber: A set of men, than which this Church was never, at any one time, blessed with either wiser or better since it was a Church: Who it was that * presided in the convocation of this province, to which this project was next to be referred; and who had it gone on, must have had a chief hand in the management of it, I need not say. Every one who knows any thing at all of his character (and I am sure your lordships are none of you strangers to it) knows him to be too good a friend to the establishment of our Church, to have been capable of being engaged in such a villainous design, as Dr. Sacheverell pretends, for the subversion of it: or had he been otherwise, yet still the major part of that venerable body must have been as great Achitophels as himself, or no harm could have been done by him. Pardon me, my lords, if the course of my argument obliges me to rise yet one degree higher, and to say, that the like majority of your lordships, and of the House of Commons, together with his late majesty, must all have come into the plot against the Church; or all the skill and malice of the inferior Achitophels would have signified nothing. And what censure that man deserves, who has the confidence to insinuate to the world, that the bishops, the other clergy, the convocations, the parliament, nay, and the late king himself, our glorious deliverer; or at least the greater part of all these, were engaged in a project "so monstrous, so romantic, and absurd," (for here I am content to use his own expressions) "that it is hard to say whether it had more of villainy or folly in it;" I shall submit it to your lordships to consider. All I design in taking notice of this part of his Sermon, is only to clear the memory of many excellent persons who are dead; and to vindicate the reputation of some still living, and in the highest stations of the Church, from that load of infamy which this rash man has with so much virulence of speech cast upon them: And to let your lordships see that nothing was intended in all that affair but what was both honourable to those who engaged in it, and, I am persuaded, would have been for the interest and peace of our Church and State, had it been accomplished.

I come now to that which is the proper subject of the present debate; namely, to offer such passages to your lordships, as I humbly conceive do plainly and fully make out the Second Article of the Commons' Impeachment against the preacher; and prove him to have spoken with more freedom than he ought, not only of the Dissenters themselves, but of the Toleration, or, (as he had rather we should call it) the indulgence granted by law to them.

And here, as I remember, it was not denied either by his counsel or himself, but that he had spoken, and spoken with warmth too, against Toleration. The only question is, What

* The Lord Bishop of London.

the Toleration is against which he spake? Whether it was that which has been granted by law to the Dissenters? Or whether it was only against a general Toleration of Atheists, Deists, Socinians, men of no principles, perhaps of no religion? Or at most, against such of the Dissenters as abused the indulgence granted them by law; and made use of it to purposes not at all warranted by it? The former of these the Commons charge upon him: the latter he pretends; the better to clear himself of their Charge.

To determine this point, I must in the first place beg leave to observe, that among the several sorts of False Brethren enumerated by the preacher, with relation to God, Religion or the Church; the second kind is of those, who give up any point of the Church's discipline and worship, page 8. To this he adds, that those are False Brethren who defend Toleration and Liberty of Conscience. And that we may the better know what Toleration and Liberty of Conscience he means, he specifies the very persons to whom he refers, and of whom he speaks; the Dissenters: "If, (says he,) to comply with the Dissenters both in public and private affairs, as persons of tender conscience and piety, to promote their interests in elections, to sneak to them for places and preferments, to defend Toleration and Liberty of Conscience, and, under the pretence of moderation, excuse their separation, are the criterions of a true Church-man; God deliver us all from such False Brethren!"

The Toleration, therefore, and Liberty of Conscience, against which he speaks, must necessarily be that of the Dissenters; those who separate from our Church: he names no others; but carries the same persons through the whole sentence, both before and after those expressions. Either therefore it is no reflection upon the Act of Indulgence to say, that all those who defend the Toleration of the Dissenters, and are for allowing Liberty of Conscience to them, are False Brethren with relation to God, Religion or the Church, page 6, 7, and such against whom we ought to pray to God to deliver us all, page 8: or if this cannot with any reason be either said or supposed, then it must remain that Dr. Sacheverell has here said what the Commons charge him withal; and that in express terms, viz. That he is a False Brother who defends the Toleration, not of Deists, Socinians, and I know not what monsters of irreligion, but of the Dissenters: those same Dissenters, who by the Act of Indulgence have a right to that Liberty of Conscience of which this gentleman speaks so very hardly; and prays God to defend us from all such False Brethren as shall presume to excuse it.

But not to insist upon a single passage which may be supposed to have dropt unwarily from him: in the second part of his Sermon, he proceeds to shew the great perils and mischiefs of those False Brethren against whom he was before speaking, both to the Church and State, page 15. And that these again are the same persons who have a right to the legal indulgence, is so very clear, that I do not see how it is possible for any one to make the least doubt of it. Page 18. He describes them as Occasional Conformists to the Church. Page 19. As those who had the old leaven of their forefathers still working in them: and, in the next sentence he expressly talks of the religious liberty which our gracious sovereign has indulged them. This in the very same sentence he calls their Toleration; (for the doctor himself is not tied up to any niceties of expression; he may call it so, though others may not:) these are the persons, and the only persons, of whom he speaks in all that part of his discourse; let us see what he says of the indulgence granted by law to them.

And first, he tells us, page 18. "That it cannot be denied, but that though they do submit to the government, their obedience is forced and constrained; and so treacherous and uncertain, as never to be trusted. That they are as much occasional loyalists to the State, as they are occasional conformists to the Church; and will betray either whenever it is in their power, and they think it for their advantage. That nothing but a scottish infatuation can so far blind our eyes, and our judgments, as to make us believe that the same causes should not produce the same effects; that the same latitudinarian and republican notions should not bring forth the same rebellious and pernicious consequences. That we shall be convinced to our sorrow, if we do not apprehend that the old leaven of their forefathers is still working in the present generation: and that his traditional poison still remains in this brood of vipers to sting us to death. That they have advanced themselves from the religious liberty which our gracious sovereign has indulged them, to claim a civil right; and to justle the Church out of her establishment, by hoisting their Toleration into its place. That to convince us what alone will satisfy them, they insolently demand the repeal of the Corporation and Test Acts, which, under her majesty, is the only security the Church has to depend upon: and which (if we may believe him) they have so far eluded by their abominable hypocrisy, as to have undermined her foundations, and endanger the government, by filling it with its professed enemies." His meaning is plainly this, that the Dissenters, whom we are so foolish as to indulge, are a parcel of false and treacherous persons; enemies both to our Church and State; and such as, if not timely suppressed, will convince us to our sorrow of the weakness and folly of taking such vipers into our bosom, as watch only for a fair opportunity to sting us to death.

But what then must we do to secure ourselves against these dangerous enemies? Why first, the Doctor assures us, that they are never to be gained by any favour that can be shewed to them. "That he must be very weak, or something worse, that thinks, or pretends that

the Dissenters" (for of these he still speaks) "are to be won over by any other grants and indulgences than giving up our whole constitution."* This shews the folly of trying the soft way of indulgence with them: and therefore he concludes, "That he who recedes the least tittle from it" (our constitution) "to satisfy or ingratiate with these clamorous, insatiable church-devouring malignants, knows not what spirit they are of; or he ought to shew who is the true member of our Church."

This, I think, comes fully up to what is objected against him; namely, "That Dr. Sacheverell does in his Sermon suggest and maintain, that the Toleration granted by law is unreasonable and the allowance of it unwarrantable." For so it needs must be, if the Dissenters be such men as he tells us they are; and will be satisfied with nothing less, than he assures us they will. And yet what next follows, is, if possible, still more express to the same purpose. It is objected against him by the Commons, that he had affirmed in his Sermons, "Queen Elizabeth was deluded by archbishop Grindall," (whom he scurrilously calls a false son of the Church, and a perfidious prelate) "to the toleration of the Genevian discipline." The fact is not denied, but the expressions are excused; and the truth of the allegation is endeavoured to be made out by historical memoirs: and it is hoped that your lordships will not account it a High Crime and Misdemeanor, to have spoken too hardly of a prelate who has been so many years in his grave.

I am, my lords, very far from thinking, that the Commons ever intended to charge Dr. Sacheverell as guilty of High Crimes and Misdemeanors for speaking scandalously of that good archbishop. Their concern was not for his person, what respect soever they may have had (as all true friends of the Reformation must needs have a very great one) for his memory. But the truth of the matter is this: the preacher complains, page 19 of his Sermon, "That queen Elizabeth was deluded by archbishop Grindall, to the toleration of the Genevian discipline." He adds, "That the archbishop was a perfidious prelate, for deluding her to tolerate that discipline. That she found it such a head-strong and encroaching monster, that in eight years she saw it would endanger the monarchy as well as the hierarchy: and like a queen of true resolution, and pious zeal for both, she pronounced that such were the restless spirits of that factious people,† that no quiet was to be expected from them, till they were utterly suppressed. That this, therefore, like a prudent princess, she did by wholesome severities; and the effect was, that by this means the crown for many years sat easy and flourishing on her head: but that her successor, king James, did not follow her wise politics." And the result was as deplorable on his side, as it had been glorious on hers: for by this means, "His son fell a martyr to their fury; his unhappy offspring suffered such disastrous calamities, as made the royal family one continued sacrifice to their malice." And all this for want of those wholesome severities, which the wise queen, his predecessor, had used utterly to suppress that factious people.

This, my lords, is the Doctor's narrative; and I have given it you in his own words. The application is plain and home. The Dissenters are now again tolerated, as they were heretofore under queen Elizabeth: there is a perfidious prelate (perhaps in his opinion a great many) who, like archbishop Grindall, help to delude another queen into the toleration of them. These eight years past (for the very number of years is remarkable) her majesty has borne the restless spirits of this factious people; and had no quiet for them. It is now high time for her to alter her measures, as queen Elizabeth wisely did. It is the only way to make the crown sit easy and flourishing upon her head. And if this be not plainly to speak out what he would have done with the Act of Indulgence, I must despair of ever being able to know any man's meaning by his expressions. Such examples are not only the most likely to enforce, but the most proper and lively methods to convey a man's sense, even to the dullest capacity; and make him clearly perceive, if not what he ought, yet I am sure what the preacher would have him to do.

The truth is, so plain was his meaning, that he himself began to fear that he had gone a little too far in what he said of this matter. And for that reason, he added that one poor sentence which immediately follows, and of which he has made such good use since: "That he would not be misunderstood as if he intended to cast the least invidious reflection upon that indulgence the government had condescended to give them (the Dissenters):" but what then did he intend by all this bitter invective against them; and that very instructive piece of history with which he concluded it? He has told us, "That the Dissenters are False Brethren, destructive both of our civil and ecclesiastical rights: that they are occasional loyalists to the State, as well as occasional conformists to the Church; and will betray both whenever they have it in their power, and it shall be their interest to do it: that it must be a sottish infatuation to believe that the same latitudinarian and republican notions, should not bring forth the same rebellious and pernicious consequences: that we shall be convinced to our sorrow, if we do not apprehend that the old leaven of their forefathers is still working in the present generation: that they have already made dangerous encroachments upon the government, and published treasonable reflections upon her majesty: that they have advanced their indulgence into a civil right, and justled the Church out of her establishment, by hoisting their Toleration into its place: that they have by their abominable hypocrisy, undermined the foundation of the Church, and ex-

* Sermon, p. 19.
† Ibid. p. 20.

dangered the government, by filling it with its professed enemies: that they are clamorous, insatiable, church-devouring malignants; whom no other grants or indulgences can win over, but the giving up our whole constitution: that ever since their first unhappy plantation in this kingdom, they have improved, and rose upon their demands in the permission of the government: that queen Elizabeth, who tolerated them for eight years together, was forced at last to suppress them by wholesome severities: that this made her crown sit easy and flourishing on her head; whereas king James the first, by not pursuing the like methods, ruined the whole royal family: that nothing better could be expected from such miscreants, begot in rebellion, born in sedition, and nursed up in faction." All this Dr. Sacheverell has said in these very plain, and emphatical words. If he did not intend by all this to shew the necessity of suppressing these factious people, these vipers, who are just ready to sting us all to death, I would be glad to know what it was that he did intend by it? Could he say all this, and with such a singular strain of impetuous eloquence, and yet, "not intend to cast so much as the least invidious reflection upon that indulgence which the government has thought fit to give them?" I must freely own, my lords, I could never have imagined this: nay, I must be excused if I add, that notwithstanding this poor evasion, I cannot yet believe it. But the Act of Indulgence stood in his way: that Act the queen had declared her resolution to maintain: your lordships and the Commons had often shewn your steadiness to the same effect. Even those who pressed so violently against occasional communion, yet thought it necessary to say, in the very preamble of that Bill, That the Act of Indulgence ought inviolably to be observed: and therefore Dr. Sacheverell thought it needful to add somewhat that he knew would not take off any thing from the force of his invective, yet might serve to excuse the severity of it, and be made use of to the purpose it now is, if he should chance to be called to account for it. This, my lords, I conceive to be the true meaning of that one single passage, so utterly repugnant to all the rest of his discourse; nor can I put any other interpretation upon it. For had I the same opinion of these men, their principles and their designs, that Dr. Sacheverell has, I should be so far from thinking them fit to be indulged, that I should account it my duty, and the duty of every true friend to our Church and Government, to take the same methods of wholesome severities with them that queen Elizabeth did: and I hope, by God's grace, that should I be questioned for it, I should not dissemble my opinion; but should have the courage honestly to own it, whatever I might chance to suffer for it.

I have, my lords, insisted the longer upon this part of the Doctor's Sermon, because I would not willingly fall under the censure of picking out disjointed sentences, and putting them together from distant places, that so I might the better draw a sense out of them, contrary to his meaning. I shall trouble your lordships but with one part more of it, to the same effect, page 24, 25, where he comes to consider, what should be the result of his long discourse? I shall read it to your lordships in his own words, page 25, "Let us therefore," says he, "as we are unhappy sharers of St. Paul's misfortune, to have our Church in perils amongst False Brethren, follow his example and conduct in a parallel case. He tells us in his Epistle to the Galatians, c. 2, that he was obstructed and pestered in preaching the Gospel, by False Brethren unawares brought in, who came privily to spy out his liberty which he had in Christ Jesus, that they might bring him into bondage. To whom he gave place by subjection, no not for an hour, that the truth of the Gospel might continue with the Church. Doubtless this brave and bold resolution did the Apostle take by the peculiar command and inspiration of the Holy Ghost: and yet if our Dissenters had lived in those times, they would have branded him as an intemperate, hot, furious zealot, that wanted to be sweetened by the gentle spirit of charity and moderation forsooth."

Here we have again the persons of whom the preacher speaks: they are our Dissenters, not the Deists, Atheists, Socinians, Hypocrites, of our times. And accordingly what follows, plainly refers to them: for thus he goes on, "Schism and faction are things of impudent and encroaching natures; take permissions for power; and advance a Toleration" (for so the Doctor is still at liberty to call what we must stile Indulgence) "immediately into an establishment." Your lordships will please to observe, by the way, that this was the very thing he had before said of these same persons, page 19, and thereby plainly shews, that he speaks in both places of those Dissenters who have a right to the Toleration or Indulgence, granted by law to Protestant Dissenters. Let us now hear what he would have done with them. Why he would have them "treated like growing mischiefs, or infectious plagues; kept at a distance, lest the deadly contagion spread." And the method he proposes in order thereunto, is this, "Let us therefore," says he, "have no fellowship with these works of darkness; but rather reprove them." These works, schism and of faction; for these, and these only, he here speaks. This is the people's part, and the inferior pastors: "As for the superior pastors, let them do their duty, in thundering out their ecclesiastical anathemas against them." Against whom, my lords? what works of darkness? Still the same he before mentioned: our Dissenters, those are the persons: their schism and faction; those are the works of darkness to which he refers. "And let any power on earth dare reverse a sentence ratified in heaven."

This, my lords, was the last part of the Commons' Impeachment upon this second Article: and it is so plainly expressed by the

preacher in this passage, that I confess it amazes me to consider with what positiveness he has thought fit to deny any such thing was meant by him. The persons whom the superior pastors are summoned to anathematize, are the same with those, whom the other pastors and people are to have no fellowship withal, but to reprove. These, by the necessary connection of his discourse, are our Dissenters; whose works of darkness he states to be schism and faction: those Dissenters to whom the government hath granted a Toleration; as himself, in the same passage, takes notice. Which being so; I shall leave the Doctor to deny and protest, as he pleases; but when all is done, his own words will rise up against him, and appear to every impartial person so plain, and positive, as to put it beyond the power of any artificial interpretation to perplex the meaning of them.

And this lets us into the true application of those passages of Scripture, with which he concludes his whole discourse. In which, having shewn the danger of our Church from these False Brethren, and exhorted his auditory to a steady courage and resolution in the defence of it; he thus at once both inforces his doctrine, and abuses his adversaries. That though the Church (for to that he applies, what Zechariah (xiii. 6.) spake of the false prophets that seduced the people) lies bleeding of the wound she has received in the house of her friends: a passage first thrown at myself,* for defending the prince's authority, when some of these very men engaged as vehemently on the side of liberty, against the rights of the crown, as they now pretend to stand up vigorously for it: [Lament. i. 4, 5,] Though the ways of Zion may mourn for a time (so the Doctor glosses upon the text) and her gates be desolate; her priests sigh, and she in bitterness, because (it is the preacher's reason, the text has no such word) her adversaries are chief; he means in the administration under her majesty; and her enemies at present prosper; (so he again improves the text; in hopes, I suppose, that it will not be long before he shall have preached them out of their places:) [Lament. i. 2.] Though among all other lovers she has few (the prophet complained that Jerusalem had none) to comfort her; and many (Jeremiah said all) have dealt treacherously with her, and are become her enemies; (he refers to those of whom he had before spoken, page 22.) [Isaiah li. 18.] though there are few to guide her among all the sons which she hath brought forth; neither are there many to take her by the hand of all the sons that she hath brought up; (Isaiah in both places, says none:) Though her enemies cry, down with her, down with her, even to the ground: that is, in other words, Though (the preacher, and a few of his friends, excepted) both the fathers and pastors of the Church; and the men who are at present in power, and authority, in the state, are become False Brethren, and run in with those enemies of the Church, our Dissenters, against it; "Yet there is a God that can, and will raise her up, if we forsake her not."

It were an easy matter to make many proper remarks upon these passages of Scripture thus applied, or rather abused, by the preacher: but that would be besides my present business; and will fall in more properly under the last Article of this Impeachment. It is enough that I have, I hope, fully shewn your lordships how Dr. Sacheverell has treated, if not the Indulgence itself, yet I am sure, those who are entitled to the benefit of it: and who, if they shall have the misfortune, by this kind of preaching, to be once generally thought such wicked, false, and dangerous enemies to our Church and State as they are here represented, I cannot think that their indulgence will hold long. If they have numbers to secure them, it is well for them: but otherwise I am sure as the case is here stated, it must be our wisdom, as well as duty, to suppress them.

How criminal such an invective as this will be accounted in the eye of the law, I dare not presume to suggest: much less shall I pretend to intimate what censure it may deserve. Somewhat I think should be done to put a stop to such preaching, as if not timely corrected may kindle such heats and animosities among us, as may truly endanger both our Church and State. As for the preacher himself, I am very willing to come into any measures of favour to him, that are consistent with your lordships' honour and justice, and will answer the ends of the Impeachment that has been brought before us against him.

THE BISHOP OF NORWICH'S* SPEECH IN THE HOUSE OF LORDS, AT THE OPENING OF THE SECOND ARTICLE OF IMPEACHMENT AGAINST DR. SACHEVERELL.

My lords; I am very sensible under what disadvantage in the opinion of many, a bishop must speak against a clergyman that stands accused of crimes committed by him in the seeming execution of his office; especially after having been so publicly required to be an advocate as well as a judge. And I am the more sensible of this prejudice lying against me, for having been so lately called into that order, and for being so unworthy of it.

But I think myself obliged notwithstanding, under all these disadvantages, to deliver not only my judgment, but also the reasons that determine me to it: which I shall do as plainly as I can; with that deference to your lordships, which I am sure it must upon all occasions particularly become me to pay; and at

* See Dr. Atterbury's Rights of an English Convocation.

* Dr. Charles Trimnel.

the same time with that freedom which I think the importance of this cause does at this time require.

Dr. Sacheverell stands impeached by the Commons of Great Britain, of High Crimes and Misdemeanors expressed in the several Articles of the Charge exhibited against him; and your lordships have heard what they have said in support of that Charge, as well as what has been offered in the Doctor's defence.

Your lordships have also debated among yourselves the merits of the cause as to the first of these Articles; and have come to a resolution, that the Commons have made good that part of their Charge; and which resolution as I did heartily concur, so I was ready to have humbly represented to your lordships my reasons for so doing, had there been either occasion or room for it.

Your lordships are now upon the second Article; wherein the Doctor is charged for suggesting and maintaining, that the Toleration granted by law is unreasonable, and the allowance of it unwarrantable; with other particulars that have immediate relation to this general Charge, and which are indeed so many proofs of it.

In this view therefore, my lords, I beg leave to consider them: and the first of these instances in support of this charge, is, that he asserts, that he is a False Brother with relation to God, religion, or the Church, who defends Toleration and Liberty of Conscience; and this, my lords, the Doctor does assert in so many words. It is one of the many marks he gives whereby we may discern who is a False Brother in those respects; not a small part of one general mark, as was alleged very inconclusively, I think, in his Defence. For if it was to be granted, (though it cannot be fairly pretended) that the Doctor makes the defending of Toleration and Liberty of Conscience, one branch only of the character of a False Brother; I do not see how it could make even a part of that character, if there was no False Brotherhood in it. And I shall not trouble myself or your lordships with going about to settle the degrees of False Brotherhood that are in this part of the character, because I think every degree of it is unreasonable and not to be warranted.

And therefore the Doctor cannot make it so much as a part of the character of a False Brother to defend Toleration and Liberty of Conscience, as it is confessed that he does, but he must at the same time suggest and maintain that the Toleration is unreasonable, and the allowance of it unwarrantable. For it can never be any degree of False Brotherhood, to defend what is reasonable and warrantable: Nor would even the Doctor, as inconsistent a man as several of the noble lords that have spoken for him represent him to be, ever have made it one; if he had not himself condemned that which he blames others for defending.

The second instance alleged is, that he calls archbishop Grindall a false son of the Church, and a perfidious prelate, for deluding queen Elizabeth into the Toleration of the Genevian discipline. I shall not, my lords, go about to add any thing to the full and just vindication you have heard of that excellent prelate. But can any of your lordships believe, that a presbyter of the Church of England, professing more than ordinary zeal for episcopacy and the constitution of this Church, should bestow such language on one who was the first bishop and the ornament of it so long; only for disposing that glorious queen to a mild treatment of the Puritans of that time, which is the utmost that is pretended to be laid to his charge, if he had thought Toleration a reasonable thing, or what was fit to be established by law?

This, my lords, I confess can never enter into my thoughts, as ready as I am to enlarge them, for the admitting of any favourable construction that will not shut out common sense.

The third instance is his making it the duty of the superior pastors to thunder out their ecclesiastical anathemas against persons entitled to the benefits of the Toleration. And to shew that he has done this, I need only refer your lordships to that part of his Sermon where the superior pastors are called upon to do so; viz. the fourth and last general head, where he draws the consequence of all that he had spoken before, in the following words:* "Now what should be the result of this long discourse, but that if we bear any true concern for the interest, honour, and safety of our Church and government, we ought stedfastly to adhere to those fundamental principles, upon which both are founded, and upon which their security under God alone depends; and consequently that it highly behoves us, cautiously to watch against, to mark, and avoid all those that thus treacherously desert them. And indeed it would be both for our advantage, as well as their credit, if such men would throw off the mask, entirely quit our Church of which they are no true members, and not fraudulently eat her bread, and lay wait for her ruin, purloin her revenues, and ungratefully lift up their heels against her. For then we should be one fold under one shepherd; all those invidious distinctions, that now distract and confound us, lost; and we should be terrible like an army of banners to our enemies; who could never break in upon such an uniform and well-compacted body. This indeed would be a true peace, and solid union, when we should all with one mind and one mouth glorify God, and not with a confused diversity of contradictious opinions, and inconsistent jargon of worship, which the God of peace, purity and order, cannot but abhor. As it is a maxim in politics, that all governments are best supported by the same methods and counsels upon which they are founded; so it will appear undeniably true in its application to our constitution, which can be maintained by no other principles, but those on which it is built, and like their basis, the

* Vide Serm. page 22, l. 4.

gospel, if there is any violation, or breach made in any branch of it, it shakes and endangers the whole frame and body. These things, however little they may be represented by our adversaries, will be found of the most considerable consequence. Let us therefore, as we are unhappy sharers of St. Paul's misfortune, to have our Church in perils among False Brethren, follow his example and conduct in a parallel case. He tells us in his epistle to the Galatians, c. 2, That he was obstructed and pestered in his preaching the gospel, by False Brethren unawares brought in, who came privily to spy out his liberty, which he had in Christ Jesus, that they might bring him into bondage: To whom he gave place by subjection, no not for an hour, that the truth of the gospel might continue with the Church. Doubtless this brave and bold resolution did the Apostle take by the peculiar command and inspiration of the Holy Ghost; and yet if our Dissenters had lived in those times, they would have branded him as an intemperate, hot, furious zealot, that wanted to be sweetened by the gentle spirit of charity and moderation forsooth! Schism and faction are things of impudent and incroaching natures, they thrive upon concessions, take permission for power, and advance a toleration immediately into an establishment. And are therefore to be treated like growing mischiefs, or infectious plagues, kept at a distance, lest their deadly contagion spreads. Let us therefore have no fellowship with those works of darkness, but rather reprove them. Let our superior pastors do their duty in thundering out their ecclesiastical anathemas, and let any power on earth dare reverse a sentence ratified in heaven."

Can any thing, my lords, be plainer than that the Dissenters, and they only are here spoken of? And what does the Doctor say in his own Defence, to avoid it? His words in his printed speech are these:

"Schismatics, my lords, are not the only persons against whom ecclesiastical censures may be denounced: The works of darkness which I referred to as fit to be reproved, in that part of my Sermon where I speak of these censures, are of the same kind with those mentioned by the Apostle, whose words I produced. All lewd and immoral practices," &c.

It is very true, my lords, Schismatics are not the only persons against whom ecclesiastical censures may be denounced, but I must still say they are the only persons referred to, in the paragraph I have read to your lordships; and therefore I own I am a good deal concerned, to find the Doctor making so vain, so unsincere a defence. For it is not works of darkness in general he is cautioning against, but expressly, by a word of his own inserting, not the Apostle's, those works of darkness mentioned immediately before; schism and faction, which with him go always together.

These are the sins against which he calls upon his superior pastors to thunder out their ecclesiastical anathemas; nor can the charge be avoided by that distinction which was offered in his behalf, between a censure purely spiritual, and an ecclesiastical censure. For admitting there is ground for that distinction in a scholastical consideration of the general question of Christian censures; yet there is no room to make use of it in this case, because he calls expressly for ecclesiastical anathemas, which can be applied to none but such as are part of the order and discipline of this Church.

And it is certain, my lords, that these censures cannot, since the Act of Toleration, be inflicted upon Dissenters, how much soever their schism remains; because it is expressly provided by act of parliament, (an act, my lords, of the whole Christian society, to which the superior pastors were personally concurring) that they shall not be treated as schismatics in the way of those ecclesiastical censures, to which their separation would otherwise have certainly subjected them.

And though I cannot undertake upon memory to be very particular, yet I dare venture to say, there have anciently been relaxations of the discipline of the Church, even when the crime was thought to deserve the continuance of it, for public expedience, and better preserving the peace of the Christian world: And that in such cases any presbyter or bishop would himself have been censured, if he had not acquiesced in such relaxations.

My lords, a presbyter of the Church of England, is the more obliged to acquiesce in all such relaxations amongst us as are legally made, because he has solemnly promised at his ordination, that "he will give his faithful diligence always so to minister the doctrine, and sacraments, and the discipline of Christ, as the Lord hath commanded, and as this Church and realm hath received the same."

I have already observed to your lordships, how the discipline of the Church stands at present as to the point in question. And as the relaxation of it in that particular, was agreeable to that temper which the bishops who petitioned king James, gave the Dissenters ground to expect; so I am verily persuaded, that the Church is so far from being hurt by this indulgence, that it has received advantage as well as credit from that moderation which gave way to it. I could give several instances of this within my own observation, while I was arch-deacon, under a reverend prelate that sits now before me, and since I have had the honour to be on this bench: in which compass of time several men of sobriety and learning, bred up to be ministers amongst the Dissenters, have left the separation, and upon due trial have been admitted to orders in our Church; in which they have officiated with entire conformity to our rules, and to the honour of our holy religion.

These instances have been so frequent and remarkable, since the Dissenters have been exempted from the penalties of certain laws, above what had been observed before; that I

think it very ill becomes any clergyman to preach against that exemption, as the Doctor (notwithstanding his reserve for consciences truly scrupulous) has done, and to call upon his superiors to act in contradiction to it. He should have forbore doing this, at least out of regard to her majesty, who had been graciously pleased to declare from the throne, that she would preserve the Toleration inviolable; a resolution I shall ever think it my duty, upon all proper occasions, to express my approbation of, as just and wise and charitable, and every way agreeable to the spirit and genius of the Christian religion.

I shall not, my lords, enter into the enquiry of what sentences are ratified in heaven: but as one may venture to say, that all that have been pronounced on earth, are not ratified there: so, by all I have seen of the Doctor's spirit in these matters, I have great reason to fear, that if the power of the keys was in his hands, it would often be very sadly abused.

However he has so good an opinion of his own spirit, as to put his superiors in mind of another part of their duty, immediately after that I have mentioned; and that is, to promote men of probity, conscience and courage; without which, he thinks, they cannot be fit members of the Church militant; in which I can as little agree with him as in the former demand. For if I may judge of the probity, conscience, and courage he thinks so deserving, by what appears in his Sermon, compared with his Speech to your lordships, I cannot think them qualifications for a minister of the Church of Christ in any respect; and I hope I shall be so happy as to find all the reverend prelates, with whom I have the honour to sit, agreeing with me in this.

But though I hope such a conduct will never recommend any person to favour, yet I do not desire that even that which I heartily blame should be punished so much as I think it deserves. And though he, who pleads so warmly for wholesome severities towards those who differ from him, has the least title to your lordships' compassion; yet I hope he will find it, as far as the just concern you have for the public tranquillity will allow you to shew it.

This I say from that which, I bless God, is the natural temper of my mind, and not from the care that has been taken by some to intimidate, as far as they could, those who were to have the cognizance of the Doctor's cause, and were not thought to be favourable to it.

I shall not take upon me to charge the Doctor or any of his particular friends with this practice, as great a temptation as one is under to do so from several circumstances. And it is not the least, that occurs in his prayers, which he has published upon this occasion, to represent not so much to God as to the world, that he is under persecution, when he is prosecuted for offending against the law, by those, who in common justice ought to be thought the fairest accusers; and before your lordships, who are justly acknowledged to be the most impartial judges.

However I will never believe, till I cannot avoid it, that any members of the Church of England who have acknowledged the government, much less any clergyman who has so often professed his obedience to it in Church and State, should have been any way accessary to those threatenings that have been given out, particularly against such bishops as should happen to condemn the Doctor's proceedings.

As far, my lords, as I have seen of this cause, I am likely to be one of those bishops; and though I do not pretend to any great share of courage, I am very free to declare to your lordships, that I am in no comparison so apprehensive of what may befal myself for condemning this person, as I am of what will probably befal the public, if your lordships should not condemn him.

But that is in your lordships' judgment, to which I humbly submit it: and only beg pardon for having detained your lordships so long in giving my reasons why I think the Commons have made good this second part of their Charge.

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443. The Trials of Daniel Dammaree,* a Waterman, Francis Willis, a Footman, and George Purchase, a Sheriff's Officer, for High-Treason, in levying War in the Kingdom, against the Queen, under pretence of pulling down Meeting-Houses: at the Sessions-House in the Old-Bailey: 9 Anne, A. D. 1710.

Die Martis, Decimo Octavo Die Aprilis, Anno Domini, 1710, Anno Annæ, Dei Gratia, Magnæ Britanniæ, Franciæ, et Hiberniæ Reginæ, &c. Nono.

A BILL of indictment for High-Treason, in levying open war against her majesty, having been found yesterday by the grand jury for the county of Middlesex, at Hicks's-Hall, against Daniel Dammaree, Francis Willis, and George Purchase, the prisoners, being in custody of

* See the preceding Case.

Mr. Luders investigates the cases which support the position advanced by lord Coke, 3 Inst. 9, viz. "If any levy war to expulse strangers, to deliver men out of prisons, to re-

the Keeper of Newgate, the Court proceeded thus:

Clerk of Arraigns. Set Daniel Dammaree to the bar. (Which was done.)

Clerk of Arr. Daniel Dammaree, hold up thy hand. (Which he did.)

You stand indicted by the name of Daniel Dammaree, late of the parish of St. Clement Danes, in the county of Middlesex, labourer; for that you, not having the fear of God before your eyes, nor weighing the duty of your allegiance, but being moved and seduced by

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move counsellors, or against any statute, or to any other end, pretending reformation of their own heads, without warrant; this is levying of war against the king: because they take upon them royal authority, which is against the king. There is a diversity between levying of war and committing of a great riot, a rout, or an unlawful assembly. For example, as if three, or four, or more, do rise to burn, or put down an inclosure in Dale, which the lord of the manor of Dale hath made there in that particular place; this or the like is a riot, a rout, or an unlawful assembly, and no treason. But if they had risen of purpose to alter religion established within the realm, or laws, or to go from town to town generally, and to cast down inclosures, this is a levying of war (though there be no great number of the conspirators within the purview of this statute,) because the pretence is public and general, and not private in particular." (See the Notes to the Case of Messenger and others, *ante*, vol. 6, p. 879). And then he proceeds:

"Having stated all the cases now extant, upon which the case of Dammaree and this harsh doctrine rest, we are now to consider that case. It came on at the Old Bailey in April 1710, before lord chief justice Parker, lord chief baron Ward, Mr. Justice Tracy, and Mr. Baron Bury.

"The prisoner was the leader of a mob, which during the trial of Dr. Sacheverell became very riotous in the support of his cause and party, and proceeded in great numbers to pull down the meeting-houses of the Dissenters; crying "Down with the Presbyterians." In this manner four meeting-houses were destroyed by them; at one of which the prisoner was present and active. Mr. Justice Foster (then a student) was one of the audience at this trial, and relates, (Disc. p. 215), that "the cases referred to before (meaning those given here) were cited at the bar; and all the judges present were of opinion, that the prisoner was guilty of the high treason charged upon him in the indictment. For here was a rising, with an avowed intention to demolish all meeting-houses in general. And this intent they carried into execution, as far as they were able. If the meeting-houses of Protestant Dissenters had been erected and supported in defiance of all law, a rising in order to pull down such houses in general, would have fallen under the rule laid down in Kelyng, with regard to the demolishing all bawdy-houses. But since the meeting-houses of Protestant Dissenters are by the Toleration Act taken under the protection of the law, the insurrection in the present case was to be considered as a public declaration by the rabble against that Act, and an attempt to render it ineffectual by numbers and open force."

"If this case were exactly the same as the rest whose authority I attempt to overthrow, I should not hesitate to class it with them, as one of the same set; notwithstanding the difference of times, and of the characters of the judges who presided; because the doctrine is avowed to be taken from them. But it seems to me to go much farther than any of them, and to establish a more dangerous doctrine, and therefore requires farther observation.

"I will not dwell upon the circumstance, though it ought always to be borne in mind, that the nation was at this time in a state of violent party fermentation, upon the very subject which occasioned this tumult and trial. The spirit of the impeachment of Sacheverell was infused into this prosecution of his mob. The Attorney and Solicitor General who conducted it, and the Chief Justice, had been managers of the impeachment in the month before. But the judgment upon the point of law received the unanimous approbation of all the judges, upon a consultation afterwards among themselves. The counsel for the prisoner, however, had not had time to prepare for deep argument upon the law, having been applied to only on the night before the trial.

"My objection to this judgment, besides those made against the former, is in the following doctrine, which I am sorry to find supported by Mr. J. Foster, viz. That circumstances of warlike array and arms are not essential to the crime. (Disc. p. 208). *Furor arma ministrat*, is the maxim which he adopts for the rule of law. This, however true in fact, will not serve for the occasion; for if you force the mind to infer guilt by strict technical arguments, you must admit the same in extenuation. If you found your doctrine upon precedents, you must adhere to them.

"I take this rule to be contrary to the general tenor of every one of the foregoing cases, as well as to Hale's opinion. To begin with the Apprentices' Case; for those of Henry 8 have not circumstances enough related to be relied on. They conspired to get arms for 300 persons, from a warehouse near the Tower; most probably from the queen's stores: and they had a trumpet, and a cloak on a pole by way of flag. Although the circumstance may have an air of ridicule to us, it shews that the lawyers of that time thought otherwise.

"In Bradshaw's Case they conspired to get armour and artillery. And here let me repeat, that these cases were for conspiracy and intention only.

"In Benstead's Case the reporter particularly observes, that it was in a warlike manner and

the instigation of the devil, the love, and true and due obedience which every true and faithful subject of our sovereign lady Anne, by the grace of God, of Great Britain, France, and Ireland, queen, defender of the faith, &c. towards our said lady the queen should, and of right ought to bear, wholly withdrawing, and conspiring, and with all your strength intending the peace and common tranquillity of this kingdom of Great Britain to disturb; the first day of March, in the 9th year of the reign of our said sovereign lady the queen, that now is,

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with drums; and Whitelock in his short account of the case (Memor. p. 33), dwells expressly on this, as the cause of the judgment.

"In Messenger's Case the multitude were led by persons called Captains, and had colours. (Kel. 71, 72.) The captain brandished a naked sword, and another flourished the colours. Hale in stating the point of this case in few words, describes it as an assembly *more guerrino* for their purpose. Hale P. C. p. 153.

"The phrase *modo guerrino arraiati (arroiez a fier de guerre,* in the French of ancient times) is a material description in all the old indictments. If it be asserted that this means no more than the force and arms in a case of trespass, I answer that the assertion is not supported by any authority. Sir M. Hale (p. 150), considers it as a description of the overt act by which the crime is to be proved. In p. 131, he writes, "The assembling of many rioters in great numbers to do unlawful acts, if it be not *modo guerrino* or *in specie belli*, as if they have no military arms, nor march or continue together in the posture of war, may make a great riot, yet doth not always amount to a levying of war." His observations from p. 149 to 154 are intended to inforce the same doctrine. "It must be such an assembly as carries with it *speciem belli;* as if they ride or march *vexillis explicatis;* or if they be formed into companies; or if they be furnished with military weapons, as swords, guns, bills, halberds and pikes; and are so circumstanced, that it may be reasonably concluded they are in a posture of war." In the same page he gives the reason "because they thereby shew that they mean to make their attempts by a military force." Such is the argument of the five judges against five, in the Weavers' Case, in Hale P. C. p. 145, 6, according to which the Attorney General proceeded in the prosecution. "The evidence should be that they are assembled in posture of war, *armis offensivis et defensivis.*" Sir M. Foster himself, in p. 211, seems rather inconsistent with his own doctrine; for he there defines the offence by this sentence; "all risings in order to effect these innovations of a public and general concern by an armed force."

"But the latter part of the above quotation from sir M. Foster suggests reflections more serious than these.—"The insurrection was to be considered as a Declaration against the Toleration act."

"The bare notion of a constructive or implied guilt, i. e. a method of moulding by rules of art, the natural actions of men into artificial forms, whereby to fit them to the standard measure of punishment, is in itself disgusting to the mind: but to go further and raise construction upon construction, by making this artificial guilt the base of a new scale of crimes in succession, is cruelty in extravagance. Here we have the rule of construction extended beyond former precedents and its own principles, in this very manner. Having construed the forcible opposition to a law into the guilt of levying war against the king, by former examples, this decision now proceeds to construe certain acts of the rabble, into a forcible opposition to the law; of which, as a statute, they perhaps knew nothing but the name. By which degrees of construction, the guilt is supposed to be very logically connected with the statute of treasons, the moral connection being quite laid aside. This is monstrous; for by the same scheme of inferences as logically drawn, and conclusions equally true, we may prove the man who robs on the highway, to have compassed the death of the king. But the subject is too serious for ridicule, and I leave it here. This example shews how careful we should be to adhere to the plain rules of reason, and how directly one deviation from them leads to others, till error is confirmed by error, and truth is confounded in their intricate mazes.

"I cannot help observing here, (it is *ad hominem* only) that the learned author seems to shew a partiality for the case of Dammaree, and an earnest zeal to support it. He betrays this by the manner in which he relates the pardon granted him. "Her majesty's new advisers did not choose to have the dawn of their administration stained with the blood of one of Dr. Sacheverell's ablest advocates."

"This opinion in one of his solid understanding and known regard for the constitution, is only to be accounted for by recurring to the particulars of his life and political sentiments. He was old enough at the time of the trial, to have imbibed strong party prejudices, which he is known to have held, and which coincided with the conviction of the prisoner. Perhaps in the eagerness of youth and party zeal, he adopted the doctrine then advanced as a rule of faith, or test of principles, which was confirmed by habit and length of time beyond the cure of reflection; and he might honestly think himself bound to defend it. Such examples are to be found even among men of liberal minds.

"I cannot take leave of this case without observing further, that whoever considers critically the judgment delivered by chief justice Parker, before quoted in p. 19, upon the special verdict, will find in it strong marks of an implicit dependence on former opinions, without examination. Even the particular manner of printing it deserves to be noticed. I mention this as an inferior consideration, and perhaps personal to the writer; yet not fit to be altoge-

at the parish of St. Clement Danes aforesaid, in the county of Middlesex aforesaid, falsely, unlawfully, devilishly, and traitorously, did compass, imagine, and intend open war, insurrection, and rebellion, against our said lady the queen, within this kingdom of Great Britain, to raise and levy: and your said treasons, compassings, imaginations and intentions to fulfil and bring to effect, you the said Daniel Dammaree afterwards, that is to say, the said first day of March, in the ninth year aforesaid, in the said parish of St. Clement Danes, in the

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ther passed by: For every such observation tends more or less to weaken the authority of the case.

"I have now stated all the leading cases. For I think it unnecessary to mention those which have happened since that of Dammaree; because if that case is to be maintained, I know of none in modern times which may not be fairly deduced from it. On the other hand, as they derive their whole strength from the same source, they must fail in like manner, if that fails. The case of lord George Gordon carries the construction farther indeed, but very logically and lawfully according to its principles. The chief justice at that trial declared it to be the unanimous opinion of the court, "That an attempt by the multitude then assembled, by intimidation and violence, without warlike array, to force the repeal of a statute, was a levying war against the king, and high treason."

"Having thus stated the authorities on which the cases depend, and considered the qualities of each separately, I shall examine those points in which they all agree.

"There seem to be two general principles current through them all, (besides that of partaking of the long lost principles of Tudor and Stuart governments before-mentioned) from which they derive their whole strength and efficacy. One is ancient, the other modern.

"I. The first is, that the offence is an invasion of the king's prerogative, or in the words of the books, an assuming of royal power, by taking the laws and reformation into the subject's hands.

"II. The second, that this crime consists in, or is manifested by the generality of design.

"The first will be found bad in its origin, inconsistent in its theory, and uncertain in its objects.

"The second is equally uncertain, as prescribing a rule of conduct, and futile in the reasoning used for its support.

"I. On the first of these general positions, I offer,

"First, the statute itself, as a full and direct refutation of the argument. The parliament roll enables us to connect the petition in the 21st year of Edw. 3, with the statute. That petition prays to have the charge of assuming royal power defined. The preamble there prefixed to the enacting of the statute, proceeds upon the Commons' petition, and then the enactment does expressly define the law with reference to their petition. It stands thus in the original. "Quant a la Petition tochante Treison, nostre Seignur le Roi ad fait declarer les articles de ycelle en manere qe ensuit: C'est assaver, En cas &c." 2, Parl. Ro. 239.]

It is the same as declaring, "Our judges shall proceed no more upon these loose charges; here is the law laid down for them, and such only are the articles of high treason." And then specifies a peculiar case, which shall not be deemed an act of a treasonable kind, though apparently an invasion of the prerogative of the crown.

"If the minds of men had not been, by long habits of contracted reasoning,

> "Held in the magic chain of words and forms
> "And definitions void,"——

this view of the law could not have failed to impress them with a sense of the injustice of such artificial constructions, as we find in the foregoing cases. Sir E. Coke could not have considered the petition and statute together, when he wrote that passage quoted in pp. 20, and 21, concluding the actions he describes to be treason, because the offenders take upon them royal authority, &c."

He then observes upon this phrase, as I have already stated in vol. 11, p. 623.

After which he states, that the accusations which he had noticed "are not exactly similar to those, on which the foregoing constructive treasons are founded. To come therefore at their true origin and principles, let us examine their qualities. The first case put by sir E. Coke is, 'To expulse strangers.' (3 Inst. 9.) That our kings did actually exercise this power, is well known. Witness the different banishments of the Jews by royal proclamation. Edward the second in the ninth year of his reign, issued a writ for banishing all Flemings out of the kingdom, because his treaty with the king of France had bound him to do so; those only being excepted, who were married and settled here. (3 Rym. Fœd. 533.) Edward the third likewise banished the Flemings in A. D. 1359, upon some offence they had given him. (3 Tyrrell, 620.) The Commons in 1376 requested him to banish the Italian brokers. (2 Parl. Ro. 332, n. 58.) An insurrection therefore to expel strangers, might with reason in those days, or when such examples were practised or remembered, be deemed an assumption of royal power. But is the power of the crown now so gifted, or so considered, either by him who wears it, or his people?

"'To alter religion or the laws,' is another of the instances put; although no case, or decision, or opinion of judges is referred to for its foundation. That was a power exercised by Henry the 8th. And although he generally made use of parliament to serve his ends, the nation was neither able nor inclined, to distinguish between the powers he exercised by act

county of Middlesex aforesaid, by force and arms, against our said sovereign lady the queen, your sovereign and undoubted liege lady, with a great multitude of men, to the jurors unknown, to the number of five hundred persons, armed and arrayed in a warlike manner, that is to say, with colours flying, swords, clubs, and other weapons, as well offensive as defensive, unlawfully and traitorously being assembled and gathered together, public war

of parliament, and those he claimed by prerogative. The general temper of the people was become servile and submissive. They saw and felt that, whatever might be the form assumed, the real hand that directed every act of state was the king's. The articles against Wolsey may be again referred to, as they furnish a striking example of this. They are in the form of a complaint to the king of the cardinal's excesses, and made by the council. At the conclusion of them, the Lords beg the king to set such order and direction upon the said lord cardinal, as may be to the terrible example of others, &c. They seem to have no idea of any other course than the king's pleasure. (Petyt, Jus Parl. 222.) Lord Herbert in his history of this reign has a remark, very fit to be mentioned in this place. He says, it was not hard for the king to deviate from the rules of law; the practice thereof having been so long interrupted in the civil wars of York and Lancaster, which left many openings for the regal authority to enter at. (Hist. p. 4.)

"Yet there is something in the above description of this treason, so correspondent to that of stat. 3, 4, Edw. 6, c. 5, against unlawful assemblies, that the case in question (if it ever happened) seems likely to have been founded upon that statute. By this act it is made high treason, for twelve or more persons 'to intend go about practice or put in ure, 'with force of arms, unlawfully and of their 'own authority, to murder, kill, slay, take 'or imprison any of the king's most honourable 'privy council; or unlawfully to alter or change 'any laws made or established for religion by 'authority of parliament, or any other laws or 'statutes of this realm, or any of them,—' if such persons do not retire on being duly required; or continue together an hour, &c.—or attempt any of the above purposes. Yet according to the law of constructive treason, the case was already provided for by the act of Edward the 3d.

"Before the Reformation, an attempt to alter religion would not have been thought a temporal offence; but would have been left to, or claimed by, the spiritual courts. Oldcastle, lord Cobham's case, in the reign of Henry the 5th, was one of treason and heresy mixed together; but the Lollards were considered as offenders against the Church, and prosecuted as such. Or if they assembled in great numbers, martial law was executed upon them; which was the course generally followed against riotous assemblies, till the end of Elizabeth's reign. James the 1st, in a proclamation that will be quoted hereafter, declares his unwillingness to proceed by martial law against certain rioters; and his stile shews that this course was not out of use then.

"If this supposed case arose out of the act of Edward the sixth, there is an end of it now: For upon the repeal of that statute in the next reign, any resolutions of judges that may have been founded upon it expired; according to the doctrine of sir Edward Coke, 3 Inst. 8, and 24, and Hal. P. C. 308, upon the effect of the act 1 Mariæ. Mr. St. John in his speech against lord Strafford, refers to the case of sir N. Throckmorton, in queen Mary's time, as one of levying war for alteration of religion. (5 Rush. Coll. 684.) But he quotes no authority; and the printed trials of him and sir Thomas Wyat contain nothing of it. As the case rests on conjecture, so does my comment. But is it not disgraceful to our laws, that a position gravely laid down by judges of former times, and so received by judges of modern times, as an established rule of criminal law, should rest upon conjecture for its authority? An objector can only state it hypothetically, and answer it for the sake of argument. It may have had no better origin, than a writer's statement of the law of treason, in the reign of Edward the sixth, when such was the law, implicitly copied by succeeding writers, without attention to the change made by his successor. I am sorry that there may be found such cases of negligence in our books, which have led to errors as dangerous as this.

"The article 'to remove counsellors,' altered in the second stage of its progress, and with no better authority, to evil counsellors, I believe to have been compounded in the same manner as the last, and therefore to be liable to the same censure. If it arose out of the earl of Essex's case, for it is uncertain whence it came, and this was one of the charges against him, it belongs to the first clause of the statute, of compassing the death. (3 Co. Inst. 12.) The words respecting the privy council in stat. 3, 4, Edw. 6, may have had an effect in Bensted's case, notwithstanding its repeal. So vague and arbitrary were the opinions of that time.

"'To pull down inclosures,' is another of the examples. Edward the sixth issued a proclamation against inclosures, commanding those who had inclosed the commons, to lay them out again by a particular day, under a penalty. (Grafton Chron. p. 1301.) Henry the eighth had done the same in 1521. (Hollinsh. p. 1500, 1st edit.) Many similar proclamations were issued in both these reigns. It matters not for the present purpose, whether they were lawful or not. [If the reader wishes to consider this subject of proclamations more particularly, it will be worth his while to read the Commons' Address to James the first, in Petyt's Jus Parl. p. 326, &c.] They required and inforced obedience from the subjects; whose habits and

against our said lady the queen, at the parish aforesaid, in the county aforesaid, the day and year aforesaid, traitorously did prepare, begin, and levy, against the peace of our said sovereign lady the queen, that now is, her crown and dignity, and against the form of the statute in that case made and provided.

Cl. of Arr. How say you, Daniel Dammaree, are you Guilty of the High Treason, for which you have been indicted, and are now arraigned, or Not Guilty?

Dammaree. My lord, I was so much in liquor, that I do not know what I did.

Serj. *Richardson.* You must now plead

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opinions are formed upon what they see in common practice, without enquiring into the right or source of authority.

"It appears from the proceedings against the duke of Somerset, that the proclamation of Edward the sixth for inclosures was an arbitrary measure of the duke's against the advice of the council. The 11th of the articles (2 Burnet Ref. Coll. of Rec. No. 46,) objected to him is on this account, whereby he caused insurrections; not because the act itself was thought illegal, nor is it so charged against him.

"Another of the examples is, 'To set a 'price upon victuals.' This was one of the ancient prerogatives, in constant exercise; repeatedly restrained by acts of parliament, whose number sir E. Coke reckons above forty, which were never regarded by the purveyors. The 39th of the articles against Cardinal Wolsey will sufficiently explain this subject, viz.—'According to the ancient custom used within 'your verge, your clerk of the market during 'his office, did present unto your officers of 'your most honourable houshold, the prices of 'all manner of victuals, within the precinct of 'the verge. And it was commanded by your 'said officers, to set up the said prices both on the 'gates of your honourable houshold, and also 'within the market-place, &c.' The charge here against the Cardinal is, that he ordered the king's prices to be pulled down, and his own to be set up. By which presumption and usurpation, he made himself equal to the king's real majesty. (Petyt Jus Parl. p. 220.)

"King Edward the sixth, in his Journal, (2 Burnet Ref. App. pp. 40, 55,) mentions a proclamation that he issued for regulating the price of meat, &c. as a matter of course; and adds, that the city of London was threatened with the loss of its franchise, if the prices were not lowered. King James the first in the beginning of his reign issued a similar one, for the clerk of the market to proclaim and put in force within the verge. (See it in his Procl. p. 11.)

"But what can be said to the examples given, of certain acts which the crown never did or could perform, when they are stiled acts of royal power? namely, 'To open prisons, 'and pull down bawdy-houses and meeting-'houses.' Lord Chief Justice Parker, in giving judgment in the case of Dammaree, seems aware of this absurdity; and strives to obviate it by saying, 'It is taking on them royal au-'thority—nay more; for the queen cannot pull 'them down, till the law be altered. Therefore 'he has here taken on him not only the royal 'authority, but a power that no person in Eng-'land has.'

"If so, (with submission to so great a name) it seems unreasonable to accuse a man of assuming to act as king, with the same breath that admits the action itself not to belong to royalty. His lordship's sentiment and expression are in the style of Lucan's exordium.

"Bella——*plus quam* civilia—"

and more suitable to a poem than the seat of judgment. If the offence were greater than the accusation, it was not a subject for that trial. It might deserve greater punishment, but the law committed to him had not ordained it.

"The reasoning of sir M. Foster excludes what seems to be the sensible argument upon this point; namely, that the real guilt was supposed to consist in the proceeding by an armed insurrection, to the criminal purpose. For he declares the purpose and intention (as the law discovers them) to make the treason; and that an armed insurrection, without more, makes an inferior crime. Nay, relies so much on the supposed intention, as to put martial force out of the question, provided there be sufficient force. To me, this mode of reasoning seems the reverse of that which guided the judges of former times. I believe they considered the armed insurrection, to have made the real danger and offence to royalty; however they might impute it to the designs of the rioters, clothed as they were by them in technical phrases, in order to avoid clashing with the words and plain sense of the statute of treason.

"But as observed before, the exception in this statute, of the case of going out with armed men, does directly refute this whole reasoning, about taking the law and reformation into the subject's hands. For he that raised a body of armed men, to obtain satisfaction for injuries, and carried on the petty warfare which then prevailed, certainly came within the exact meaning of that phrase, which has been so improperly described as a criterion of the treason. He assumed royal power, and took the laws into his own hands, to obtain justice for himself.

"If we consider the feeble state of a royal residence, except in particular castles, before military guards were established, we cannot wonder at the suspicious care with which any appearance of insurrection would be watched. This may serve a little to excuse the severity of the old opinions, and to account for the ready charge of high treason upon public violence: Especially if those who might have cause to fear any popular resentment, might be found in the king's retinue. Even so late as the time of queen Elizabeth, the earl of Essex's design to obtain possession of her

either Guilty, or Not Guilty. If you plead Not Guilty, you will be put upon your trial, and be heard fully in your defence, by yourself, or counsel.

Cl. of Arr. Are you Guilty, or Not Guilty?
Damm. Not Guilty.
Cl. of Arr. Culprit, how wilt thou be tried?
Damm. By God and the country.

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palace, was formed upon the expectation of being opposed by only a dozen halberdiers, or some such small number. (Lord Bacon's Works, 8vo. vol. 3, p. 192.)

"Secondly, this doctrine is inconsistent.

"According to Coke and Hale, a conspiracy to levy war is not an overt act of compassing the king's death. But Foster says they are mistaken. (Page 211, note.) Therefore take it, according to the latter, to constitute such overt act. But observe: This war is not that of the statute of treasons, against the king in his realm, but the king of constructive treason, in the cases. As for example, if it be an insurrection which in judgment of law is intended against the person of the king, as to imprison or dethrone him; a conspiracy to levy war for these purposes, is such overt act. (Foster, sect. 3.) But according to the learned judge's sixth section, a conspiracy to levy war against the king's royal majesty, is not an overt act of compassing the king's death. His citation of Hale in the margin of the page is not an authority for this point. It stands here therefore as the author's own doctrine; and his two sections can be rendered consistent, only by making the king on the throne, a different being from the king in his realm, of the statute; or by re-establishing the hypocritical quibble of the civil wars, and separating his person from his majesty and authority. So dangerous is the departure from plain sense. The statute means to describe one kind of direct war; but the cases have made several, metaphysical and argumentative wars. There is the war in fact, and the war in law; the war of military preparation, and the war of logical conclusion.

"There is an answer in kind that may be given to this construction, which is direct and conclusive. It must be admitted, that the king whose death is forbidden to be compassed, is the same king as he against whom war ought not to be levied. But the king in law, i. e. the royal authority, never dies. If therefore under this statute, war may be raised against the royal authority, it must be admitted, that the death of the same royal authority may be compassed, i. e. the death of him who dieth not, and whom treason itself cannot kill. Sir Henry Vane's defence contains some just observations on this point. Nor ought it to be deemed an overstraining of this mode of construction, to contend as Vane does, and as serjeant Glynn did in Cromwell's time, that the word 'king' of the statute of Edw. 3, extended to a protector in possession of the supreme power. Like lord Peter and Jack, in their hateful hasty zeal to run from each other, these two absurdities immediately meet or cross. In this strain was the resolution, that Charles the 2d was king *de facto* as well as *de jure*, whilst a wanderer abroad, and when his constructive subjects did not know where to find him. (See Kel. 15.)

"I must enlarge upon the discussion of this point, because it will receive direct and ample illustration from that highest example which our history furnishes, the civil war of the 17th century. It is remarkable, that in those declarations of the king and parliament, by which both parties endeavoured to make their causes good, the king contends for the plain doctrine of treason, by levying war against his person, and the parliament is driven to equivocation, in maintaining the constructive doctrine.

"The king's answer of May 4, 1642, to the parliament's declaration, shortly states the case of sir J. Hotham's armed opposition to him at Hull, (See 4 Rushw. Coll. p. 573.) as high treason according to stat. 25 Edw. 3, by levying war against his person. (Ib. pp. 568, 9.) The remonstrance of Lords and Commons of May 26th, contains the following article of answer to the above, which they call the main point of all. (Ib. pp. 584, 5.) 'Sir John 'Hotham is said to have shut the gates against 'his majesty, and to have made resistance with 'armed men in defiance of his majesty: Where- 'as it was indeed in obedience to his majesty 'and his authority, and for his service, and the 'service of the kingdom, for which use only 'all that interest is, that the king hath in the 'town; and it is no farther his to dispose of 'than he useth it for that end. And sir John 'Hotham being commanded to keep the town 'and magazine, for his majesty and the king- 'dom, and not to deliver them up but by his 'majesty's authority signified by both Houses of 'Parliament, all that is to be understood by 'those expressions, of denying and opposing 'his majesty's entrance, and telling him in 'plain terms he should not come in, was only 'this; that he humbly desired his majesty to 'forbear his entrance till he might acquaint 'the parliament, and that his authority might 'come signified to him by both Houses of Par- 'liament, according to the trust reposed in him. 'And certainly if the letter of the statute of 25 'Edw. 3, c. 2, be thought to import this, that 'no war can be levied against the king but 'what is directed and intended against his per- 'son; or that every levying of forces, for the 'defence of the king's authority and his king- 'dom, against the personal commands of the 'king opposed thereunto, though accompanied 'with his presence, is levying war against the 'king, it is very far from the sense of that 'statute. And so much the statute itself speaks '(besides the authority of book cases, prece- 'dents of divers traitors condemned upon that 'interpretation thereof) For if the clause of 'levying war had been meant only against the 'king's person, what need had there been 'thereof after the other branch of treason in

Cl. of Arr. God send thee a good deliverance.

Then the Prisoner was taken away.

Cl. of Arr. Set Francis Willis to the bar. (Which was done.)

Cl. of Arr. Francis Willis, hold up thy hand. (Which he did.)

You stand indicted by the name of Francis Willis, late of the parish of St. Andrew, Holborn, in the county of Middlesex, labourer; for that you, not having the fear of God before

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'the same statute, of compassing the king's 'death, which would necessarily have implied 'this? And because the former branch doth 'imply this, it seems not at all to be intended in 'this latter branch; but only the levying war 'against the king, that is, against his laws and 'authority. And the levying war against his 'laws and authority, though not against his 'person, is levying war against the king. But 'the levying force against his personal com-'mands, though accompanied with his pre-'sence, and not against his laws and authority 'but in the maintenance thereof, is no levying 'war against the king, but for him.'—A little after they avow, consistently enough, 'that 'there can be no competent judge of this, or 'any the like case, but a parliament.'

"Now where did the parliament learn this sophistry? From the principles of those servile courtiers and judges who supported the Tudor tyranny, which we find here, adopted and maintained in their very words, by the Republicans. Another instance for recurring to Swift's allegorical characters of the Tub.

"The king's answer to the above article compares their pretensions to those of the Pope, whose exorbitant power was obtained under pretence of interpreting the scriptures, and declaring articles of faith, and proceeds thus: (4 Rushw. Coll. p. 597.) 'May not this munition 'of Hull) which is not taken from us, [This al-'ludes to an allegation of the remonstrance 'that it was kept for his use,] be employed 'against us? Not against our authority sig-'nified by both Houses of Parliament, but 'only to kill those evil counsellors the malig-'nant party which is about us, and yet for our 'good, for the public good? They will de-'clare it so, and so no treason within the sta-'tute 25 Edw. 3. Which by their interpre-'tation hath left us, the king of England, ab-'solutely less provided for in point of safety, 'than the meanest subject of the kingdom. 'And every subject of this land, for whose se-'curity the law was made, that they may 'know their duty, and their danger in breaking 'it, may be made a traitor, when these men 'please to say he is so. But do they think 'that upon such an interpretation (upon pre-'tence of authority of book-cases and prece-'dents, which without doubt they would have 'cited, if it had been to their purpose) out of 'which nothing can result but confusion to 'king and people, will find any credit with our 'good subjects? And that so excellent a law, 'made both for security of king and people, 'shall be so eluded by an interpretation, no 'learned lawyer in England will at this hour, 'we believe, set under his hand; notwith-'standing the authority of that declaration, 'which we hope shall bring nothing but in-'famy upon the contrivers of it.'

"Another passage of this declaration shews that the king expected the nation at large, to give him credit for the justice of his notion of the law, viz. 'From declaring how mean a 'person we are, and how much the kingdom 'hath been mistaken in the understanding of 'the statute of 25 Edw. 3, concerning treason '— they proceed in the spirit of declaring— '&c.' (4 Rushw. Coll. p. 598.) He then accuses them of the like perversion of the act of 11 Hen. 7, ch. 1, and concludes with stating seven propositions, as a necessary consequence of their doctrine, from whence it would follow that the whole power of the state belonged to the parliament.

"I am afraid that the parliament might have found more ancient authority than their own for their interpretation, if they had pleased to give it the king, and of the same kind. It had been very recently held forth in the charge against lord Strafford, as the necessary and just construction of the law. Mr. St. John, in explaining the grounds of the bill of attainder to the Lords, (5 Rushw. Coll. 679.) says, 'If levying of war extend no further than 'to the person of the king, these words of the 'statute are to no purpose; for then the first 'treason of compassing the king's death, had 'fully included it before: Because that he 'which levies war against the person of the 'king, doth necessarily compass his death.'"

Then follows the passage cited in lord Strafford's Case, vol. 3, p. 1482, which he illustrates, and proceeds as follows:

"I remember the following case appearing in the court of King's-bench in Easter term, 1782. Complaint had been made by the marshal, of great irregularities committed among his prisoners; and upon an inquiry being directed by lord Mansfield, these circumstances were brought forth. The prisoners had established a court of lord mayor and aldermen and other officers, for determining all disputes in the prison; who acted with the formalities of a real court, and in some instances had executed judgment with much severity. They had a printed book of rules, and demanded money of every prisoner upon entrance, for support of the court. The mock magistrate had not only a mace and tipstaves attending him, but being a clever fellow, was able to support his jurisdiction for some time; till meeting with some refractory offenders, he proceeded with his officers to punish them for contempt, by the summary process of ducking. This was the immediate cause of the complaint. Hereupon my lord mayor and his aldermen,

your eyes, nor weighing the duty of your allegiance, but being moved and seduced by the instigation of the devil, the love, and true, and due obedience, which every true and faithful subject of our sovereign lady Anne, by the grace of God, of Great Britain, France, and Ireland, queen, Defender of the Faith, &c. towards our said lady the queen should, and of right ought to bear, wholly withdrawing, and conspiring, and with all your strength intending the peace and common tranquillity of this kingdom of Great Britain to disturb; the first

with mace and staff, were brought by rule into court, in the presence of lord Mansfield. The two chief magistrates, true and false, stared at each other, and reminded us of the two Sosias: but the true judge did not intimate a charge of high treason against his false brother; nor did the attorney general, who was there, direct an indictment of high treason to be preferred against him. He joined with the rest of the audience in a hearty laugh, and the offenders were dismissed with a sentence of close confinement in the King's-bench and other prisons, according to the degrees of their guilt. The ensign of authority, the mace, the overt act of usurpation and defiance, was wrapped up in a bag, and carried away by the tipstaff. One of the offenders in his defence denied that he was an alderman; another urged the immemorial custom of the prison, yet professing to have but lately come there. The mayor would have made a long speech, to shew that he had been acting for the public good of the prison. Lord Mansfield addressed these words to him, 'Your crime is the having acted as a 'court of justice, daring to assume a jurisdic-'tion.'

"If Mr. Justice Foster had been alive, and present in his seat, he must, consistently with his own principles, have thought him guilty of high treason; for the case had every one of the circumstances of his definition, in the case of Dammaree. It was levelled at the king's crown and royal dignity, (Discourses, pp. 211, 215,) —a rising to effect this end by force and numbers—for the reformation of real or imaginary evils of a public nature—a public declaration against the law of the land—and an attempt to render it ineffectual, by numbers and open force.

"If a precedent is necessary to justify my argument, I can bring one from that prolific source of bad ones, the reign of Edward the second. Those judges and lawyers who supported the Tudor law of treason, would not object to it on that score. The sixth article of the impeachment of the Spensers, runs thus,

"'Whereas the earl of Hereford and lord 'Wigmore were directed by the king to make 'war upon Lewellyn Bren,—who surrendered 'himself to those lords at the king's grace and 'pleasure, and those lords promised him the 'same,—and the king did so accept him—The 'said sir Hugh the father and sir Hugh the 'son, who had accroached royal power as above-'said, took the said Lewellyn, and carried him 'to Cardiff—where conspiring together to exer-'cise a jurisdiction which they could not law-'fully have, they caused him to be hanged, 'drawn, beheaded and quartered, as a felon; 'thus taking on themselves royal power and 'jurisdiction, which belonged to the crown.' (Ruffhead's Appendix, p. 17.)

"There is a case in common practice, which furnishes a very pointed example, of the taking the laws and reformation out of the hands of the crown, by numbers and open force, which has never yet received the imputation of levying war against the king, though answering the description of the criminal law, as established by the cases. It used to be frequently practised within sight of the king's palace, to the disturbance of his royal residence. How often have 2 or 300 persons been assembled in St. James's Park, for the purpose of ducking a pickpocket in the canal, before it was inclosed, which they accomplished in defiance of authority? What defence could be made to an indictment of high treason for this offence, if the case of Dammaree is to stand? The prisoner must rely on the illegal good sense of the jury, for his acquittal. Chief Justice Kelyng's address to the jury in Messenger's case, (Kel. 71) might be as well delivered on such trial, with a change of names: and if a dangerous rebellion should happen to have preceded it recently, might perhaps bring about a conviction of the offenders.

"Thirdly, The doctrine is uncertain in its objects.

"It is not possible to extract a rule of action for common life, which all laws ought to have in view, from a law so variously and capriciously expounded. The law of the land thus becomes a snare, and an irregular rule of right; which is one definition of tyranny. Can the most discriminating mind perceive a principle of connection, between the following actions? viz. To invade the kingdom with an army, and to raise a mob to pull down bawdy-houses: to change the established religion, and to pull down the places of worship of those who oppose it? ('Lorsqu' on fait tant que de rendre raison 'd'une loi, il faut que cette raison soit digne 'd'elle.'—Esprit des Loix, liv. 29, ch. 16.) Unless it is that principle which sir M. Foster will not admit to be conclusive, of popular tumult and insurrection. For he allows that there may be insurrection without high treason. Although the secret motive of prosecution in the objectionable cases, will be found to contradict him, and to shew a desire on the part of the crown, to suppress opposition to the government of the time."

"The attorney general in the case of Purchase, adds a charge of aggravation, to the war which the prisoner had levied against the Toleration Act, at the head of Sacheverell's mob, which goes farther than any of his predecessors. He considers a heavy part of the priso-

day of March, in the ninth year of the reign of our said sovereign lady the queen, that now is, at the parish of St. Andrew, Holborn, aforesaid, in the county of Middlesex aforesaid, falsly, unlawfully, devilishly, and traitorously did compass, imagine and intend open war, insurrection, and rebellion, against our said lady the queen, within this kingdom of Great Britain, to raise and levy; and your said treasons, compassings, imaginations, and intentions, to fulfil, and bring to effect, you the said Francis Willis, afterwards, that is to say, the said first day

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ner's crime to be, the opposing a just and necessary prosecution that was carrying on by the Commons of England. Though a manager of that impeachment, he does not indeed construe this to be high treason. But I would engage to prove it so, by arguments as good as those which support the foundations of his doctrine.

"Another general principle before mentioned, of inferring guilt from the generality of design, has been made subservient to the first. But the distinction advanced is not to be found in the cases brought to illustrate it, except by those who make it for themselves; and never can arise, but in convulsions of the state, which tend to a total dissolution of the government. Consequently no certain rule of law, no useful lesson of conduct can be drawn from the arguments used.

"If it has any meaning it is this, that the insurgents who thus assume the supreme power, (for it is not royal, which a consistency in *re technica* requires it to be) act with a determination to alter the law, and abolish altogether the subject they complain of, whether inclosures, high price of victuals, &c. To establish this design by such evidence as the fact requires, it seems necessary to shew, either a national convention for the purpose, or a design co-extensive with the kingdom. It is not the tumultuous assembly of the inhabitants of one parish or town, whose passions are expressed in general words, because passionate language naturally flows into them, whose knowledge of the kingdom is confined within ten miles of their own home, and whose grievance has arisen there; it is not such an insurrection, even with arms, that will prove that they intended to procure the same redress in Cornwall, which they may be actually seeking in Northumberland; and to carry mutiny all through the land, while they scarce could find their way to the next county. Yet the argument requires this extent and conclusion.

"Here the reasoning of sir M. Hale, and of the five judges of whom he was one against five, in the Weavers' case, shews itself true and equitable; namely, That it cannot fairly be presumed, that the intention of such persons is a general one. It is more just, and according to the truth, to impute their offence to their particular grievance, (see 1 Hal. P. C. 145, 6,) and to consider it a great riot, and no treason. This is according to the rule of law in other cases, to presume in favour of the prisoner, rather than to his prejudice, where the act is equivocal.

"We frequently read and hear of the great and venerable sir Matthew Hale, when the opinion of that excellent judge is quoted upon the law of treason. Let those who write or speak so highly in his praise, turn to the following reflection, at the end of his eleventh chapter. 'How dangerous it is by construction 'and analogy to make treason, where the letter 'of the law has not done it. For such a method 'admits of no limits or bounds; but runs as far 'and as wide as the wit and invention of accusers, 'and the detestation of persons accused will 'carry men.' In another place he praises the legislature in the reigns of Edward the 6th, Mary, and Elizabeth, for their great caution upon the subject of constructive treasons, and their fears of extending the statute of Edw. 3, beyond the letter. (Pa. 293, ib.) If the persons above mentioned are sincere in their praise, let them press that reflection to their bosoms. More especially, if they fill judicial stations, let them shew their respect for Hale's superior wisdom, by giving effect to his opinion; and not admire his excellence only when it favours their own opinions, but pass it by when opposed by such men as Kelyng and others his inferiors.

"It is impossible to read his observations on the subject before us, without feeling that in every page he is struggling against his conviction, in order to give an intelligible and consistent form to the opinions of his brethren, and that even he has failed in this endeavour. He is obliged to call the clause of levying war obscure; (Hal. P. C. p. 148,) whereas the truth is that the decisions have made it so. They place it in the dark, and then it is not to be seen.

"Sir M. Foster, and after him, Blackstone, seem aware of the technical difficulties of this doctrine, and endeavour to obviate them by laying stress on the word all—all inclosures, &c. But this is an addition of their own, not to be found in the Reports; and shews their hesitation upon the point, without helping the argument. If such grave authors could be suspected of being satirical, we might doubt whether they had not purposely clogged the rule of law with this emphatical word; from a sense of the absurdity of the case, and a desire to render the rule useless, by involving it in a course of proof impossible to be had. Can it be expected in the nature of things, if the case were an insurrection against inclosures, that the rioters should be proved to have intended to destroy all the inclosures between Lancaster and the Land's End? or all the meeting-houses, if that were the grievance? For what purpose then do they define the law, with a qualification so idly placed?

"The expulsing strangers and inhancing wages have not the word 'all' tacked to them. There is one case and but one of these times, in which this word has occurred to my observa-

of March, in the ninth year aforesaid, in the said parish of St. Andrew, Holborn, in the county of Middlesex aforesaid, by force and arms, against our said sovereign lady the queen, your sovereign and undoubted liege lady, with a great multitude of men, to the jurors unknown, to the number of five hundred persons, armed and arrayed in a warlike manner, that is to say, with colours flying, swords, clubs, and other weapons, as well offensive as defensive, unlawfully and traitorously being assembled and gathered together, public war

tion. In lord Herbert's description of the Yorkshire insurrection in 28 Hen. 8, the rebels were for expulsing all villain blood and evil counsellors. And though this was levelled at lord Cromwell and his low birth, it did not excite the minister's vengeance against them. (Lord Herb. p. 476.) I fear that some readers may be ready to accuse me here, of as narrow reasoning as that I inveigh against. I admit it to *be so*, and merely technical: but it is in kind, and I hope as fair and just as that of the Reports, and more satisfactory.

"That riot which seems to have been the most extensive of any in its object, is the case of Henry 8th's reign, to inhance the price of labour. Yet what does this war against the statute of labourers amount to? It has been shewn that the act in question was probably that of 6 Hen. 8, ch. 3, then recently made; which was corrected in the year following, by having the city of London excepted out of its provisions. It regulates the rate of labour and hours of work to day labourers and artificers; a part only of those who work for daily wages. And because we have an imperfect account of an insurrection, occasioned (as the obscurity of the report leaves us to conjecture) by this law, and of the result of a previous consultation of the judges thereupon, two lawyers of eminence have thought proper to frame a general rule, extracted from this obscure account, to explain the law of treason. They first, without sufficient proof, infer this to have been a general design, to raise the price of all daily labour. Then, secondly, they conclude, that such general discontent makes their conduct in rendering it effectual, war and rebellion against the king upon the throne.

"In the Apprentices' Case, they conspired to deliver out of prison some comrades who had been confined for making riots, to kill the lord Mayor, burn his house and get arms. This is supposed to constitute a general design against the queen's authority. The universality of the insurrection then, has this extent, viz. the limits of one prison, the house and life of one magistrate, and the arming of 300 men. The Pope has a better pretence for calling his own the universal religion, though it embraces less than a twentieth part of mankind.

"The Oxfordshire conspiracy to destroy inclosures, and so to levy war in the kingdom, was so insignificant as not to have found a place in the contemporary histories. [The earl of Strafford upon an example of the same kind exclaims, 'These be wonderful wars. If we 'have no greater wars than such as four men 'are able to raise, by the grace of God we shall 'not sleep very unquietly.'——5 Rush. Coll. 639.] Whatever the words or cry of the insurgents might be, they ought not in common sense to be carried beyond the grievance felt in their own neighbourhood, which made them complain. It was as reasonable in the Weavers' Case, to conclude their design to have been general, as in this of inclosures. The prosecution directed by the attorney general in that case, upon the equal division of the judges, should be held to have determined the point of law. But, as before observed, that case of inclosures ought not to be brought under consideration at all, upon the statute of treasons.

"There was a trial at the Essex assizes in August 1800, which passed without notice, upon the point for which I refer to it, in which this law of high treason ought to have come in question, if it is to be maintained consistently. My information of the case was from a newspaper, but I have examined the indictment myself upon the file. It was a prosecution of one Little and four others, 'for conspiring and 'confederating to raise the price of wages in 'husbandry;' charging, that 'in pursuance 'of the said conspiracy and confederacy, they 'did with others unlawfully assemble and 'meet together, and by threats, &c.——and 'with force and arms, compelled one T. T. 'labourer and T. F. labourer to leave their 'lawful work and occupations, and to join with 'them.' The trial was before lord Kenyon, who is reported to have declared the offence to be like 'high treason:' yet upon the defendants being found guilty, they were punished by twelve months imprisonment, and to give security for their good behaviour.

"But if precedent and authority are to have effect, this was a case of high treason. What shall we say? Is the judge to be awakened by the attorney general's coming into court to address the jury, and is the law likewise to sleep till he calls it forth? I will pursue the reflection no further.

"There are three proclamations of James the first upon this subject, which furnish arguments to confirm the foregoing observations. They are in the 5th year of his reign. (Proclam. Ja. 1, pp. 139, 140, 149.) The first is for—'suppressing persons riotously assembled for 'the laying open of inclosures.' Reciting some late riotous proceedings of this sort in Northamptonshire, it calls upon all persons in authority to suppress them by force of arms, if necessary. This instrument does not accuse the offenders of the crime of treason, though it charges them with attempts which according to Fineux, amount to it, against the king's crown and dignity. The second proclamation, dated about a month after, is for the same purpose, and for 'reformation of depopulations.' In this the offenders are accused of heinous treasons,

against our said lady the queen, at the parish aforesaid, in the county aforesaid, the day and year aforesaid, traitorously did prepare, begin, and levy, against the peace of our said sovereign lady the queen, that now is, her crown and dignity, and against the form of the statute in that case made and provided.

Cl. of Arr. How say you, Francis Willis,

But if the opinion of the privy council, by whose advice the proclamation must be supposed to have issued, may be relied on, it contradicts the above doctrine of Foster and Blackstone, deduced from the universality of design; for it expressly describes the grievance they would redress, to be peculiar to the offenders, and not general; namely, 'some towns depopulated, and divers families undone by means 'of such inclosures.' This declaration by the crown, which threatens to pursue the traitors as well by our arms as our laws, does not, according to the learned writers of modern times, define the treason justly. But, I think it wiser to receive it as the doctrine that would have passed in Westminster-hall in that day, although I would reject it in this as untenable, for the reasons before given.

"The third proclamation, dated about a month after the last, is for general pardon of these offenders. I here copy the beginning of it, because it supplies an argument to contradict the technical reasoning of the cases upon another point, and proves how vague, and therefore little intitled to respect as precedents, the authorised opinions of treason in these times were. It is intitled 'A proclamation signifying 'his majesty's gracious pardon for the offenders 'about inclosures;' beginning thus, 'In calling to our princely remembrance, that in the 'late rebellion upon pretence of depopulation 'and unlawful inclosures, the greatest number 'of the offenders have not been proceeded with 'according to justice, and their traiterous deservings; no nor so much as apprehended or 'touched for the same, although they be in no 'better case or degree than those few which 'have suffered or been called in question; there 'want not some reasons and circumstances, 'which if we would consult only with policy 'or passion, might induce us to further severity, 'and a more general execution of the law upon 'the same offenders. For we are not ignorant that 'of all other seditions and rebellions, none doth 'bring such infinite waste and desolation upon 'a kingdom or state as these popular insurrections; which though they do seldom shake or 'endanger a crown, yet they do bring a heap of 'calamities upon multitudes of innocent subjects, and chiefly upon the authors and actors 'themselves.' Here we find a rebellion and traitors, and yet an admission on the part of the crown, that the acts themselves do seldom shake or endanger a crown.

"We learn from the proclamation that the insurrection was a considerable one. There is a particular account of it in Howes's continuation of Stowe's Chronicle, (p. 890,) who relates that there was a special commission to certain lords and others, for doing justice upon the offenders, of whom sir Edward Coke was one. It is therefore remarkable that he should not have mentioned the case; for some were tried and executed for high treason in levying war, and others for felony and misdemeanor.

"Compare with the above proclamations, the style of one issued by his present majesty, on the 31st of October 1795, after a desperate act of violence against his person in the procession to parliament. It states the riotously assembling of the offenders, who—'proceeded 'to certain daring and highly criminal outrages, in gross violation of the public peace, 'to the actual danger of our royal person, and 'to the interruption of our passage to and from 'our parliament,'—offering reward and pardon for discovering of the principal offenders.

"They who were in London at that time, and had an opportunity of knowing the circumstances, know that the danger to his majesty's sacred life by this outrage, might have been with truth represented greater than it appears in the proclamation. Yet we find nothing of the hard names of treason and traitor applied to the offence. So much have the times changed. The point of law, which would have warranted the use of those phrases, was made to give way to the general opinion of the transaction; which seemed to be a sudden thoughtless motion of daring outrage and insult, by a rude mob.

"The new statute of treason which was enacted in the session following (stat. 36. Geo. 3, ch. 7) proceeds upon a consideration of these daring outrages, which, together with other attempts of the disaffected, are declared to have made it necessary to provide a further remedy for the security of the throne: which the act accordingly carries into effect."

See also other important observations upon this Case in the early part of the same chapter. In the following chapter the learned author, with great ability, considers, "the declarations of the legislature at different times relative to the doctrine of constructive treason." Of the Riot Act (1 Geo. 1, stat. 2, chap. 5,) he well remarks that it has declared the law and sense of the legislature, upon offences the same in kind and effect as those which formerly occasioned the objectionable cases of constructive treason. It proceeds expressly against rebellious riots and tumults, which are thereby made felony. This has made a great change in the law in the present age, and subsequent to Dammaree's case. It adds a powerful argument to this treatise, which opposes itself to that judgment. First by enabling us to renew the argument of sir M. Hale, upon a similar act of queen Mary's reign, and with greater force; because he only reasoned from analogy upon a law expired, but we can argue from a law in force. Secondly by depriving lord chief justice Parker of one which he makes great

are you Guilty of the High Treason whereof you are indicted, and for which you are now arraigned, or Not Guilty?

Willis. I am entirely innocent.

Serj. *Richardson.* Then plead Not Guilty; and if upon trial you appear to be innocent, you will be acquitted.

Cl. of Arr. Are you Guilty, or Not Guilty? You must use the words.

Willis. Not Guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Cl. of Newgate. You must say, By God and your Country.

Willis. By God and the Country.

Cl. of Arr. God send you a good deliverance.

Then he was taken from the bar.

Cl. of Arr. Set George Purchase to the bar. (Which was done.)

Cl. of Arr. George Purchase, hold up thy hand. (Which he did.) You stand indicted by the name of George Purchase, late of the parish of St. Giles in the Fields, in the county of Middlesex, labourer; for that you, not having the fear of God before your eyes, nor weighing the duty of your allegiance, but being moved and seduced by the instigation of the devil, the love, and true and due obedience, which every true and faithful subject of our sovereign lady Anne, by the grace of God of Great Britain, France, and Ireland, queen, Defender of the Faith, &c. towards our said lady the queen should, and of right ought to bear, wholly withdrawing, and conspiring, and with all your strength intending the peace and common tranquillity of this kingdom of Great Britain to disturb; the first day of March, in the ninth year of the reign of our said sovereign lady the queen, that now is, at the parish of St. Giles in the Fields aforesaid, in the county of Middlesex aforesaid, falsly, unlawfully, devilishly, and traitorously, did compass, imagine, and intend open war, insurrection, and rebellion, against our said lady the queen, within this kingdom of Great Britain, to raise and levy; and your said treasons, compassings, imaginations, and intentions, to fulfil and bring to effect, you the said George Purchase, afterwards, that is to say, the said first day of March, in the ninth year aforesaid, in the said parish of St. Giles in the Fields, in the county of Middlesex aforesaid, by force and arms, against our said sovereign lady the queen, your sovereign and undoubted liege lady, with a great multitude of men, to the jurors unknown, to the number of five hundred persons, armed, and arrayed in a warlike manner, that is to say, with colours flying, swords, clubs, and other weapons, as well offensive as defensive, unlawfully and traitorously being assembled and gathered together, public war against our said lady the queen, at the parish aforesaid, in the county aforesaid, the day and year aforesaid, traitorously did prepare, begin and levy, against the peace of our said sovereign lady the queen that now is, her crown and dignity, and against the form of the statute in that case made and provided.*

Cl. of Arr. How say you, George Purchase? Are you Guilty of the High Treason for which you have been indicted, and are now arraigned, or Not Guilty?

Purchase. Not Guilty.

Cl. of Arr. Culprit, how wilt thou be tried?

Purchase. By God and the Country.

Cl. of Arr. God send thee a good deliverance.

Then he was taken away, and the Court adjourned to the day following.

Die Mercurii, 19 *Aprilis*, 1710, 9 *Annæ.*

DOMINA REGINA *versus* DAMMAREE.

Present, the right hon. sir Samuel Garrard, bart. lord mayor of the city of London; the right hon. sir Thomas Parker, knt.

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use of. For in the reign of queen Anne there was no such law, and no such argument could have been urged against his decision. Thus one main position of it, wherein he asserts, that the arguments were the same as those formerly used by Hale, and held insufficient, totally fails. And here I may call in aid an opinion of Mr. Justice Foster, upon a case of the same kind. It is upon the question of words being held treason in certain cases: Upon which he writes, that Hale's reasoning upon statutes which had made the words only felony, was unanswerable. (Disc. p. 201.)"

* "The indictment against Purchase and Dammaree for pulling down meeting-houses, charged that they, with a multitude to the number of 500, to the jury unknown, armed and arrayed in a warlike manner with clubs and staves, and other arms offensive and defensive, levied war against the queen. No exception was taken to the indictment by Dammaree's counsel: but on behalf of Purchase it was objected, that there ought to have been an overt act laid of the treason; because there being such a variety of facts which amount to levying war, if the particular facts intended to be brought forward against the prisoner were not alleged, he could not know how to make his defence. But it was resolved by all the judges, upon conference, that the indictment was good, and that levying war being an overt act of itself, no other overt act need be alleged. They agreed, however, that it ought to appear sufficiently upon the indictment that a war was levied, and that they appeared in such warlike manner; and that an indictment generally that A. levied war is not good. The indictments in Benstead's case, and in the case of the Apprentices for pulling down bawdy-houses, were framed as this is. And they all resolved that the stat. 7 W. 3, did not make the laying an overt act necessary where it was not so before." East's Pleas of the Crown, chap. 2, sect. 54.

lord chief justice of her majesty's court of Queen's Bench; the right hon. sir Edward Ward, knt. lord chief baron of her majesty's court of Exchequer; the hon. Robert Tracy, esq. one of the judges of the court of Common Pleas; the hon. sir Thomas Bury, knt. one of the barons of the Exchequer, and a numerous company of the nobility, and persons of quality and distinction.

Cl. of Arr. Crier, make proclamation.

Crier. O Yes.

Cl. of Arr. Again, again.

Crier. O Yes, O Yes. All manner of persons that have any thing more to do at this general sessions of the peace, sessions of Oyer and Terminer, holden for the city of London, and gaol delivery of Newgate, holden for the city of London and county of Middlesex, and adjourned over to this day, draw near, and give your attendance, for now the Court will proceed to the pleas of the same city and county.—God save the Queen.

Cl. of Arr. Middlesex Crier, make proclamation.

Crier. O Yes, O Yes. You good men of the county of Middlesex, summoned to appear here this day, to try between our sovereign lady the queen, and the prisoners that shall be at the bar, answer to your names as you shall be called, every man at the first call, upon pain and peril shall fall thereon.

Then the Jury that were returned on the pannel, were all called over, and the appearances of all those that answered to the call, were recorded.

Cl. of Arr. Set Daniel Dammaree to the bar.—(Which was done.)

Cl. of Arr. Daniel Dammaree, hold up thy hand.—(Which he did.)

Cl. of Arr. You the prisoner at the bar, these good men, whom you shall hear called, and do now personally appear, are to pass between our sovereign lady the queen and you, upon trial of your life and death. If therefore you will challenge them, or any of them, your time is to speak to them as they come to the book to be sworn, and before they be sworn.

Cl. of Arr. Call sir Edward Gould, knt.

Officer. Here he is, Sir.

Cl. of Arr. (To the prisoner.) There is sir Edward Gould, do you challenge him?

Damm. No, my lord, I do not intend to make any challenges.

Cl. of Arr. Then hold sir Edward Gould the book.—(Which was done.)

Cl. of Arr. Look upon the prisoner.—You shall well and truly try, and true deliverance make between our sovereign lady the queen, and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to your evidence. So help you God.

Cl. of Arr. Richard Browne, esq.; (He was sworn.)

The Prisoner making no challenges, the following gentlemen were sworn.

JURY.

Sir Edward Gould, kt.	Giles Riddle,
Richard Browne, esq.	Thomas Dodd,
Peter Levigne, esq.	Charles Williams,
Robert Breedon, esq.	Thomas Sotton,
Charles Bateman, esq.	Daniel Selman,
Peter Lekeux, esq.	John Collis.

Cl. of Arr. Cryer, Count these.—Sir Edward Gould, knt.

Cryer. One, (and so of the rest.)

Cl. of Arr. John Collis.

Cryer. Twelve good men and true, stand together, and hear your evidence.—Are you all sworn, gentlemen?

Cl. of Arr. Cryer, make proclamation.

Cryer. O Yes, If any one can inform my lords the queen's justices, the queen's serjeant, the queen's attorney-general, or this inquest now to be taken, of the high treason of which the prisoner at the bar stands indicted, let them come forth, and they shall be heard, for now the prisoner stands at the bar upon his deliverance; and all others that are bound by recognizance, to give evidence against the prisoner at the bar, let them come forth, and give their evidence, or else they forfeit their recognizance. And all jurymen of Middlesex that have appeared, and are not sworn, may depart the Court for this time, and give their attendance here again to-morrow morning.

Cl. of Arr. Daniel Dammaree, hold up thy hand. (Which he did.)

Gentlemen of the jury, look upon the prisoner, and hearken to his cause. He stands indicted by the name of Daniel Dammaree, late of the parish of St. Clement-Danes, in the county of Middlesex, labourer, for that he not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, &c. (*prout* in the indictment, *mutatis mutandis,*) against the peace of our sovereign lady the queen, her crown and dignity, and against the form of the statute in that case made and provided. Upon this indictment he has been arraigned, and thereunto hath pleaded Not Guilty, and for his trial hath put himself upon God and his country, which country you are. Your charge is to inquire whether he be Guilty of the high-treason whereof he stands indicted, in manner and form as he stands indicted, or Not Guilty. If you find him Guilty, you are to enquire what goods and chattels, lands and tenements he had at the time of the high-treason committed, or at any time sithence. If you find him Not Guilty, you are to enquire whether he fled for it: if you find that he fled for it, you are to enquire of his goods and chattels, lands and tenements, as if you found him Guilty. If you find him Not Guilty, nor that he fled for it, you are to say so, and no more, and hear your evidence.

Foreman of the Jury. My lord, here is such a great noise in the Court, that unless a stop

be put to it, we shall not be able to hear the counsel, or the evidence: we humbly pray the Court may be kept quiet.

L. C. J. Officer, make proclamation of silence.

Cryer. O Yes, My lords, the queen's justices strictly charge and command all manner of persons to keep silence upon pain of imprisonment.

L. C. J. Gentlemen of the queen's counsel, be pleased to proceed.

Then William Thomson of the Middle-Temple, esq. (afterwards recorder of London, and baron of the Exchequer,) of counsel for the queen, opened the Indictment thus:

Mr. Thomson. May it please your lordship, and you gentlemen of the jury, Daniel Dammaree, the prisoner at the bar, stands indicted, for that he, not having the fear of God before his eyes, but being moved by the instigation of the devil, and designing to withdraw the cordial love and natural obedience, which true and faithful subjects of our sovereign lady the queen do, and ought to bear towards her, and intending to disturb the peace and common tranquillity of this kingdom, on the first of March last, in the parish of St. Clement Danes, in the county of Middlesex, traiterously compassed and imagined to levy war, and stir up rebellion and insurrection against our said lady the queen within this kingdom: and that he might accomplish his said traitorous imaginations and designs, on the said first of March, and in the said parish being assembled, with a multitude and great number of people armed, and arrayed in a warlike manner, he did then and there unlawfully and traitorously levy war against our said lady the queen, contrary to the duty of his allegiance, against the peace of our said lady the queen, her crown and dignity.

To this indictment he has pleaded Not Guilty.

Gentlemen, if the evidence for the queen prove the Charge, as laid in the indictment, it is your duty to find him Guilty.

Att. Gen. May it please your lordship, and you gentlemen of the jury, the record that has been opened to you is an indictment of high-treason against the prisoner at the bar: it charges him with disturbing the general peace and quiet of the realm, and inciting rebellion within your county. The crime that this indictment is founded upon, has in all ages and countries been accounted the highest crime that can be committed against any state, or government. The laws of England are very express, that if any man takes himself to be aggrieved by any law whatsoever, and endeavours by force to seek redress of those grievances, or to get any reformation of those things he complains of, and this against the civil authority, it is levying of war, and is high-treason within the statute of the 25th of Edw. 3.

That there has been an insurrection within this county, not only in the place mentioned in the indictment, but in other places, I believe is so well known to all here, that it would be misspending time to call many witnesses to that matter. But it will be incumbent on us, now the prisoner stands on his trial, to shew what particular part he had in this business; and therefore we shall call many witnesses to prove what part he had in this affair: and if they give the same account that they have given in their informations, we shall make it appear that the prisoner at the bar was the ring-leader of those tumultuous and rebellious persons, that assembled the first of March last; first to pull down the meeting-houses in the neighbourhood, and after burning them, went on to pull down others.

The immediate design which they pretended was, the pulling down the meeting-houses, that is, those places which are allowed to such as are unhappy enough to dissent from the Church of England, to meet in for their religious worship.

Whether Mr. Burgess has given any offence to the prisoner, or whether any of the congregation have given him any offence, we shall hear from himself; but no provocation can justify such rebellious tumults as were made on this occasion: the pretences that are mentioned, will not excuse what the law makes high-treason.

It will be in vain for the prisoner at the bar, or any person in his circumstances, to pretend that he is a friend to the government, or a loyal subject, when his actions shew he is guilty of high-treason. The prisoner at the bar stands doubly obliged to bear faith and true allegiance to her majesty, not only as all good subjects are obliged to it, but as he is a menial servant to her majesty, for you will find that he was, at the time he committed this treason, in her own cloth, wearing her own badge, whilst he was thus acting in rebellion against her.

That this tumultuous meeting was not accidental, will appear, when the witnesses shew, that some days before this, there had been great disorders in the streets: and the night before, you will find by our witnesses, that a great disorderly tumult was in the Temple, and there it was resolved upon, by those tumultuous persons, that the night following they would pull down Dr. Burgess's meeting-house, and all the other meeting-houses thereabout. You will find, this was not only talked of, but put in execution,* by the prisoner, and

* This outrage Swift thought fit to commemorate with much baseness in one of his hired performances of time-serving scurrility. In his letter to the excellent bishop Fleetwood, he perverts the bishop's expression of regret that "the places of Divine Worship had not been spared by the spirit of discord," and with a puny despicable affectation thus elegantly comments upon his own perversion. "How

others with him: for, the first of March, they saw the prisoner, and about 500 others, with staves, and clubs, and other weapons, in the indictment mentioned, both offensive and defensive; there they were levying war, as the law expounds it. And though the darkness of the night would otherwise have concealed him, yet the fire they made in Lincoln's-Inn-Fields, with the materials of that meeting-house, did afford light enough for the witnesses to give an account of the prisoner: how he seemed more forward than all the others; and that he was not content with doing the mischief he designed there, but afterwards, as head of the mob, commanded them to go and assist at another, and they went with him, through Queen-street, to Drury-lane, to another fire, that was made by another company.

We shall shew, that it was not only at these two places, but that it was a general design, to pull down all the meeting-houses at that time. And when we have made out this general intention, and that it was executed in this manner, we do not doubt, but you will all be sensible, that this prosecution was very requisite: For it is the interest of every honest man to put an end to these tumults and disorders, be their opinions what they will. It is the interest of all people (in order to enjoy what God has blessed them with, be it more or less) to put an end to these disorders: For these are like the great tumults of waters, that bear down all before them. Wherever these things are, all the burglars and robbers, and such people, join with them to do mischief.

We will call our witnesses, and give an account of what relates to the prisoner, and they will make it appear, that he was chiefly concerned in this insurrection; and not only acted in Lincoln's-Inn-Fields, but in other places.

Sol. Gen. My lord, the facts that have been opened by Mr. Attorney, we take to be fully and plainly rebellion, and high-treason: I shall not therefore trouble your lordship with saying any thing more of the facts, but only shortly state the course of our evidence.

We shall shew that there was a design, the day before these meeting-houses were pulled down, to pull them down: That the next day that design was put in execution: That the prisoner was the most active among them, and took upon him to be the leader, and captain of the mob, on that occasion. And if this be made out, I hope it will give your lordship, and the jury, full satisfaction, that he is guilty of the crime laid to his charge in this indictment. —Call Thomas Tolboy. (Who was sworn.)

Att. Gen. Pray, give my lord, and the jury, an account what you know of the design and intention of pulling down meeting-houses, and when, and where it was.

Tolboy. My lord, I was passing through the Temple, on Tuesday night, where I saw a great mob: I heard them consult of demolishing the meeting-houses the next day.

Att. Gen. What meeting-houses did they talk of?

Tolboy. It was Mr. Burgess's in Lincoln's-Inn-Fields.

Att. Gen. Was you among them?

Tolboy. No; I was passing through the Temple, and heard them talking as I passed.

Sol. Gen. How many were there together at that time?

Tolboy. I believe there were some thousands.

Sol. Gen. When were they to be pulled down?

Tolboy. Some were for pulling of them down then, and some were for leaving of them until the next night, and others were for leaving of them alone, until the event of Dr. Sacheverell's trial.

Sol. Gen. What was the occasion of the meeting of that mob that talked of this?

Tolboy. I do not know that.

Sol. Gen. Do you know that that meeting-house was pulled down?

Tolboy. Yes, I know it was pulled down.

Sol. Gen. Did you see it?

Tolboy. No, I did not see it, I only heard say so.

Mr. *Whittaker.* Did you see the prisoner at the bar in that company, in the Temple?

Tolboy. No.

Mr. *Whittaker.* When you overheard them, were they talking low, or loud?

Tolboy. It was loud.

Mr. *Whittaker.* How came you not to give information of it to some magistrate?

Tolboy. It was known before; they had broke the windows the night before.

Mr. *Darnell.* Do you know any particular person that expressed himself for pulling down the meeting houses?—*Tolboy.* No.

Mr. *Darnell.* Who then did you hear say there was such a design?

Tolboy. I heard several.

Mr. *Darnell.* Then you do not know any one?—*Tolboy.* No.

Mr. *Darnell.* Then you only express yourself, that you heard the mob say so?

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pathetically does your lordship complain of the downfall of whiggism, and Daniel Burgess's meeting-house! The generous compassion your lordship has shown upon this tragical occasion makes me believe your lordship will not be unaffected with an accident that had like to have befallen a poor whore of my acquaintance about that time, who, being big with whig, was so alarmed at the rising of the mob, that she had like to have miscarried upon it; for the logical jade presently concluded (and the inference was natural enough) that, if they began with pulling down meeting-houses, it might end in demolishing those houses of pleasure where she constantly paid her devotion; and, indeed, there seems a close connexion between extempore prayer and extempore love. I doubt not, if this disaster had reached your lordship before, you would have found some room in that moving parenthesis, to have expressed your concern for it." Swift's Works, vol. 6, p. 92.

Att. Gen. We do not call this witness to speak in particular against the prisoner, but to shew, that these people resolved among themselves, to pull down the meeting-houses.

L. C. J. You say you was passing through; you did not make any long stay, did you?

Tolboy. No, my lord.

L. C. J. Were they come to a conclusion of the discourse of pulling them down? Or did you leave them talking of it?

Tolboy. I left them talking of it.

Sol. Gen. He said there was an intimation of it on Monday night, I desire to know how he knew or heard of it?

Tolboy. You know the windows were broke on Monday night.

Sol. Gen. Did you see them?

Tolboy. No, but I heard so.

Sol. Gen. Who told you so?

Tolboy. It was a man that lives in the house with me.

Lord Chief Baron. What were they met about?

Tolboy. They were the mob that accompanied Dr. Sacheverell home to the Temple.

Then Captain *Edward Orrel* was sworn.

Att. Gen. Pray look on the prisoner at the bar, and give an account of all you know of this riot, and how he was concerned in it.

Orrel. My lord, I heard there were several disturbances on Monday night: on Tuesday night I was at a coffee-house, where there were several housekeepers: when I was there, there was news brought, that they had pulled down Mr. Burgess's meeting-house.

Att. Gen. Who?

Orrel. The mob that came with Dr. Sacheverell. Pray, says I to Mr. Leonard, who keeps the coffee-house, (he is one of that congregation) pray step up and see the truth of it, and whether you can do him any service: you will find his son, and, perhaps, he will put you into a way to put a stop to it. He went up to Mr. Burgess's, and found that they had broke the windows of his house, and meeting-house; and after they had done that, they went off. From thence he went to Mr. Burgess's son, and, I suppose, he went to the secretary of state. On Wednesday I went to Westminster-hall, with some neighbours, and went into Oliver's coffee-house, where I staid some time, and afterwards saw her majesty return through the park to St. James's. There were several papers dispersed about a prize-fighting; I thought they had been the common papers that are dispersed about such prizes, but I found it was about a prize between Sacheverell and Bloodly. When I returned, I went to the same coffee-house, and when I had been there about half an hour, heard that the mob were gone from the Temple to Mr. Burgess's meeting; says I, to some of my friends there, I will stay no longer here; the least we can do, is to endeavour to keep the peace: I will go up, and see what is doing. Accordingly I went, and one friend with me: I went to the house, to offer to do him what service I could, though I do not belong to him. When we came first, my friend was fearful: said I, I will go into the meeting-house. I met several that assaulted me, and made me pull off my hat. When I came into the meeting-house, I saw them pulling it down; several gentlemen, in very good habits, I believe 20 or 30, were busy in pulling down the pews; and I observed a little man in the pulpit very busy, pulling it down: I took particular notice of him, but could not see him among the prisoners that have been taken. I came out, and told my friend, that it was all destroyed. We staid a little while at the corner of the street, and then I went in again: I went in several times, till some of them, that were pulling up the boards, swore at me, and said, Damn him, what does that lazy fellow do? And I believe, they took me for a spy. I went again to the coffee-house, and gave this account to my neighbours, and presently news was brought, that they were gone to several other meetings. We went out again, and went round by Fetter-lane. I saw the constable and the watch were very much insulted. I spoke to the constable: he said, I wish I could do any service; but we have our lives in their hands; we dare not do any more, we have been so much abused. I went into Holborn, and saw the fire lighted, and went round at a distance, and saw several pieces of timber thrown into it. From thence we went again to Lincoln's-inn-fields; there I heard some asking, which was the lord Wharton's house? Others said, St. James's: no, said others, The city, the city, the bank: damn them, says another, we will have all the meeting-houses down. We walked down that row where sir Francis Child's son's house is, and went towards my lord chancellor's house: I saw a chariot standing at his door; said I to my friend, I believe here is somebody from court, I hope there will be some guards come down by and bye. When I was there, I halted a little, and observed a small body of the mob detached from that fire; they run after one another, cross the fields: I observed a pretty tall man at the head of them; I kept my eye on that party. In the middle of the field they grew stronger, and then they divided themselves; some went towards the arch, but more towards Powis house: I went towards those at Powis house, and there I saw Dammaree in the queen's livery, with his badge; and there they held a council of the mob, as I called it. God damn it, says Dammaree, we will have them all down. Some were for going into Wild-street; Damn it, says another, that is a hen-roost, the other is worth ten of it: says Dammaree, I'll lead you on, boys; huzza! high church and Sacheverell! God damn them all, we will have them all down. Some of them turned off towards Wild-street, and others towards Powis-house. Dammaree, and the mob with him, went through Queen-street, and once in ten or twelve yards, he turned about, Huzza! Why don't you come on, boys,

to Drury-lane? God damn them, we will have them all down. I called to him, and said, How now, Dammaree? He turned about, Huzza! Come along, boys: but he made me no answer. In this manner, he led them on from Lincoln's-inn-fields to Drury-lane, but I never saw him afterwards. By and bye comes a little fellow; I'll make way, says he; and with a pick-axe, which he had in his hand, endeavoured to break open the meeting-house door, and was working with it at the bottom. Afterwards, while he was working at the door, comes another man, one Henry Sanders, about my size, or a little higher; he had a hatchet in his hand: he comes up, and swears, God damn you, you break open a meeting-house! you do not know how to do it; and, with the second or third stroke, he broke through. I stood close by him, laid my hands upon him, and looked upon him, while he broke open the door, and made the best remarks I could of him: I have seen most of the prisoners, but could not find him among them; but, at last, was informed, that he was apprentice to one Wallis, a sawyer, in Parker's-lane.

Att. Gen. It is no matter to give an account of him: I ask, when they had broke open the door, what did they do next?

Orrel. I went into the meeting-house with them, and asked, Where is Jolly, the queen's waterman? Says one, he is gone to the back-door: no, says another, he is gone to my lord Wharton's. But I never saw Dammaree after that.

Sol. Gen. You say, he led them from the fire at Lincoln's-inn-fields?

Orrel. I observed him first there, but did not know him, till they came near the arch, and there they consulted together, which way to go; and by that time they came to Drury-lane, I believe there were 2 or 3,000 of them.

Att. Gen. At Drury-lane, you say, there was a tumult of 2 or 3,000; pray observe the prisoner, and tell us, whether you are sure, that he is the man that headed the mob at the arch in Lincoln's-inn-fields, and led them to Drury-lane?—*Orrel.* Yes, he is.

Sol. Gen. What happened afterwards? did any guards come? and was there any opposition given to them? Or did they disperse themselves?

Orrel. My lord, I was in Drury-lane half an hour and more. My friend had been some time in a house, and after we had heard all this noise, Well, says I, I will go to my neighbours at the coffee-house, and acquaint them what has happened. As we were going into Lincoln's-inn-fields we met a detachment of the horse guards: I went up to the captain; Sir, says I, this is the best way, through the arch, for there is a very great mob: I run back along with them. As soon as they came, they halted at Great Queen-street. There came another detachment of the horse-grenadiers, and met them, and both joined. After they had drawn themselves up in one line, the officer commanded them to ride among the mob, and disperse them, which they did; but were very favourable, and struck them with the flats of their swords. After this, a fellow drew his sword, and got under a bulk; I stepped up to him, and as soon as I came up, Sir, says I, what the devil are you doing? I saw two or three grenadiers strike him with the flats of their swords: he stood with his drawn sword, and pricked at two or three horses, not so as to do them any harm.

Sol. Gen. Do not go into the particulars relating to that man, but tell us, did you see any other tumult?

Orrel. I went down with the grenadiers and life-guards to Blackfriars.

Sol. Gen. Was any opposition given to the guards at Drury-lane?

Orrel. None by Dammaree, nor to the horse guards, as I saw.

Sol. Gen. Was there any to the grenadiers?

Orrel. There was opposition; for I saw a sword drawn, and the officer assaulted, and he swore, God damn them, he would fight the best of them.

Sol. Gen. Do you know of any other meeting-houses that were pulled down that night?

Orrel. I went to the guards, and told them that I heard some of the mob were gone into the city; some said to the Bank; some said to Mr. Shower's, and others said to other places. I went to them; Gentlemen, says I, it is better to have all the meeting-houses destroyed than the Bank, pray let us go thither: I went along with them down Holborn, and brought them up Fleet-lane; there I heard they were not gone to the Bank, but that they were gone to Blackfriars: I shewed them the way, and went down with them almost to the meeting-house, and shewed them where it was.

Sol. Gen. Was that meeting-house pulled down?

Orrel. It was then pulling down, but it was prevented by the guards.

Sol. Gen. Then you speak as to Mr. Burgess's, and the meetings in Fetter-lane, Drury-lane, and Blackfriars?

Orrel. I was at them all.*

Mr. *Whittaker.* Pray, what time of night was it that you saw Mr. Dammaree?

Orrel. I cannot be positive, but I believe it was about half an hour after ten.

Mr. *Whit.* Pray, in what condition was he?

Orrel. I did not much observe it; I believe he had been drinking, he looked flushed.

Mr. *Darnell.* I think you say, you was in Mr. Burgess's meeting-house, and saw several there pulling it down; now, did you see Dammaree there?—*Orrel.* No.

Mr. *Darnell.* Did you see Dammaree, 'till you came to the fire?

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* Fetter-lane and Blackfriars are within the city of London. The prisoners were indicted for levying war in Middlesex. As to the admissibility of this evidence, see the 4th Resolution in sir Henry Vane's case, *ante*, the note thereto, *ante*, vol. 6, pp. 123, *et seq.*

Orrel. No, nor at the fire.

Mr. *Darnell.* Did you see him at the meeting-house in Drury-lane?

Orrel. No; nor did I see him after he had brought up that party through Queen-street: But I believe him to be the chief person that led them from Lincoln's-inn-fields to Drury-lane.

Damm. When I was in gaol, you asked me, whether I was the waterman? Yes, I am, said I, do you know me? If you are the waterman, said you, I do.

L. C. J. If you have a mind to ask him any questions, you may.

Damm. I desire to ask him, whether he saw me in any of the meeting-houses?

Orrel. I said before, I did not. My lord Sunderland desired me to see the prisoners in Newgate; I did so: When I came, they were in a dark hole. I desired to speak with Dammaree and Purchase; and as soon as we went into a lighter room, I knew them both.

Then *Joseph Collier* was sworn.

Sol. Gen. Do you know the prisoner at the bar? Tell us, whether you ever saw him before, and where?

Collier. My lord, I saw him at the fire, at Lincoln's-inn-fields.

Sol. Gen. What time?

Col. About eight or nine o'clock.

Sol. Gen. What day?

Col. Wednesday, the 1st of March last; I saw him bring the branch that holds the candles.

Sol. Gen. Where had he it?

Col. In Dr. Burgess's meeting.

Sol. Gen. What did he do with it?

Col. He went two or three times round the fire, and then threw it in.

Sol. Gen. What did he do besides?

Col. He hallooed, and threw up his hat and wig several times.

Att. Gen. Where did you see him first?

Col. In Lincoln's-inn-fields.

Att. Gen. Did you go into the meeting-house?—*Col.* No.

Att. Gen. Where did you see him with the branch?—*Col.* Just at the end of the alley.

Att. Gen. Did you see him come out of the meeting-house?—*Col.* I did.

Att. Gen. And you saw in his hand the branch?—*Col.* Yes.

Att. Gen. Where did he carry it?

Col. He carried it to the fire.

Att. Gen. What did he do then?

Col. He went about hallooing for Sacheverell, and went round the fire two or three times, and then threw it in.

Sol. Gen. What was that fire made of?

Col. It was made before I came.

Sol. Gen. How long was he there?

Col. I believe two or three hours.

Sol. Gen. When did he go away?

Col. He went before the guards, and led the mob off to Drury-lane.

Sol. Gen. How do you know he led them off?

Col. He said, Let us go to Drury-lane, and he went with them, and I saw them go up Great Queen-street.

Mr. *Thompson.* What sort of cloaths had the prisoner that night?

Col. His waterman's coat and badge.

Sol. Gen. Who appeared to be the most active man at the fire?

Col. The waterman; he that stands there.

Mr. *Thompson.* Do you know of any thing else fetched by this man, besides the candlestick?—*Col.* No.

Mr. *Whittaker.* What time of night did you first see Dammaree?

Col. I believe it was near nine.

Mr. *Whittaker.* Will you be positive it was about that time?

Col. It was about nine, or ten.

Mr. *Whittaker.* Will you be positive it was before half an hour after ten?

Col. I cannot be positive to half an hour.

Mr. *Whittaker.* Was not the meeting-house pulled down before you saw Dammaree?

Col. Yes, there was a fire before.

Mr. *Whittaker.* What time was that?

Col. It was about nine.

Mr. *Whittaker.* If the meeting-house was pulled down, did not they take out the candlestick at first, before they pulled it down?

Col. No, there was a great fire before they brought it away: I was not there at the beginning.

Mr. *Darnell.* You say you came after the fire was lighted, and there you saw Dammaree, but you did not go into the meeting-house; how then can you say he was in the meeting-house?

Col. Because I stood at the end of the alley, and saw him come out.

Mr. *Darnell.* Why, were there any lights there?

Col. Yes; the alley was very full of lights, and the meeting-house too.

Juryman. My lord, I desire he may be asked, whether he saw Dammaree bring that branch out of the meeting-house?

Att. Gen. What did you see him bring out of the meeting-house?—*Col.* The branch.

L. C. J. Could you see the door of the meeting-house where you stood?—*Col.* Yes.

L. C. J. Did you see him bring that branch out of the meeting-house?

Col. Yes; and I saw him throw it into the fire.

Mr. *Darnell.* Was you near the door?

Col. As near as I am to you.

Then *John Still* was sworn.

Att. Gen. Look upon the prisoner, and see if you know him.

Still. Yes, I do know him.

Att. Gen. Where, and when did you see him?

Still. The night that the fire was, I saw him in the alley, that leads to Mr. Burgess's meeting-house.

Att. Gen. Where was you?

Still. Just in the alley.

Att. Gen. Where was he going, or from whence was he coming?

Still. They were all standing and hallooing.

Att. Gen. Did you see him do any thing more?—*Still.* No.

Att. Gen. What time was it?

Still. It was, as near as I can guess, about eleven.

Sol. Gen. Was the meeting-house down, or not?

Still. I cannot tell; there was such a crowd, I could not get to it.

Sol. Gen. Was you at the fire?

Still. Yes, but I did not see him there.

Sol. Gen. Did you hear him say any thing?

Still. Nothing, but only halloo.

Then *John Mitchell* was sworn.

Sol. Gen. Was you at the fire in Lincoln's-inn-fields the 1st of March last?

Mitchell. Yes.

Sol. Gen. Do you know the prisoner?

Mitchell. Yes.

Sol. Gen. Where did you see him?

Mitchell. I saw him that night at the fire.

Sol. Gen. What did he do there?

Mitchell. I only saw him run about the fire, and halloo.

Sol. Gen. Where had they the wood for that fire?

Mitchell. From Dr. Burgess's meeting-place.

Sol. Gen. Did you see any wood brought from thence?

Mitchell. No; it was all laid there before I saw it.

Sol. Gen. Was you at the meeting-house?

Mitchell. No.

Sol. Gen. Was you there when he went from the fire?—*Mitchell.* No.

Att. Gen. What time was it that you saw him there?—*Mitchell.* About eleven.

Sol. Gen. Pray, who appeared the most active person there?

Mitchell. I do not know, they were all active.

Mr. *Thompson.* Did you hear him say any thing to the mob?

Mitchell. No; only halloo.

L. C. J. Did they force him to halloo, as he did?

Mitchell. No; there was no forcing of him.

Sol. Gen. Did he act as a man that was forced to halloo? or as one that did it willingly?

Mitchell. My lord, he had no occasion to halloo unless he would.

Mr. *Whittaker.* What time of night was this?

Mitchell. About eleven.

Mr. *Whittaker.* Was you there when the mob went away to Drury-lane?—*Mitchell.* No.

Then *Francis Morgan* was sworn.

Att. Gen. Pray look upon the prisoner at the bar, and tell us if you know him.

Morgan. My lord, the 1st of March last, at about ten in the evening, I heard there was a tumult in the city: I live in Southwark, and I came over the water, with another person, to see what it was that occasioned it. I came to Dr. Burgess's meeting-house, where I saw a great number of persons pull it down. After I had viewed them there a-while, I went to Lincoln's-inn-fields, and I saw them make a bonfire; and there I saw this man in the queen's livery as a waterman; he excited the mob very much in their proceedings, and I saw him pull off his wig, and halloo, and seemed mightily to be rejoiced: He went round the fire, with several other persons, that had staves in their hands, I did not see him have any, but he had his wig in his hand; he walked round the fire with them, in procession, with a bedstead that was going to be thrown in.

Att. Gen. You say it was ten o'clock at night when you came there first; was the fire kindled then?—*Morgan.* Yes.

Att. Gen. Did you see Dammaree there when you first came?

Morgan. I did see him: I did not then know his name; but that is the man. I took notice of him, because of his livery.

Sol. Gen. Where had they the materials for that fire?

Morgan. I saw a great many bring wood from the meeting-house: I said to some of them, Gentlemen, what are you doing? The guards are coming. Said, they, Damn the guards, and the parliament too; we are ready to face them all.

Sol. Gen. Why did they curse the parliament?—*Morgan.* I do not know that.

Sol. Gen. Pray who seemed to be the most active man, and inciter of them?

Morgan. The principal man I observed was the prisoner at the bar, whose name I understand since to be Dammaree.

Sol. Gen. How long did you stay at the fire?

Morgan. About half a quarter of an hour, and then I heard them enquire, Where is the fellow that said the guards were coming; so I got away as fast as I could, for I came over the water in my night-gown.

Sol. Gen. Was Lincoln-inn's fields the only place you came to?

Morgan. I saw no other fire; I came to the meeting-place first, and saw them pull it down, and then went to the fire, which was very great, and I saw the prisoner encourage them in bringing things to throw in: I saw him walk round the fire, and several about him with sticks in their hands; but as to him, I observed none in his hand.

Att. Gen. How many people do you think might be there at that time?

Morgan. I believe two thousand.

Damm. What time of night was this?

Morgan. About half an hour after ten, or eleven.

Damm. Well, my lord, I am very well satisfied.

Mr. *Thompson.* You say you saw a procession before the bedstead was thrown in? Did you see any thing else that was thrown in?

Morgan. Yes, the doors of the meeting-house.

Mr. Thompson. Was there any procession, or hallooing before them?

Morgan. Yes, and I saw abundance of other materials thrown in.

Mr. Thompson. Did they make the same procession before all of them?

Morgan. No, not before all.

Dunn. Did you see me throw any thing in?

Morgan. No.

Juryman. Did you apprehend him to be drunk, or sober?

Morgan. I did not apprehend him to be disguised in drink; I took him to be rather a madman, than any thing else.

Juryman. Did you see him with any of the mob, between the meeting-house and the fire?

Morgan. The mob was so large, as to extend from the meeting-house to the fire; there were great numbers running to and again, but I saw him at the fire.

Then *John Eaton* was sworn.

Att. Gen. Pray give an account of what you know of this outrage, and of the prisoner at the bar.

Eaton. I saw him at the place where the fire was.

Sol. Gen. Was you there at the making of the fire?—*Eaton.* No.

Sol. Gen. What was the fire made of?

Eaton. Of the wood brought from the meeting-house; I went to the meeting-house with the gentleman that was up before.

Sol. Gen. What did you see brought out?

Eaton. I saw a great many people bring out pieces of board.

Sol. Gen. Did you see the prisoner bring any thing out?

Eaton. No, I only saw him at the fire.

Sol. Gen. How did he behave himself there?

Eaton. Hallooing, as the rest of the mob did.

Sol. Gen. What ceremony did they use to the timber before they threw it in?

Eaton. They hallooed when they threw it in.

Sol. Gen. Did they walk round the fire with any?

Eaton. Yes, with the bedstead.

Sol. Gen. Who did appear to be the most active?

Eaton. There were many as active as he; but he was very active.

Sol. Gen. Pray what condition was he in: drunk or sober?

Eaton. I am no judge of that.

Att. Gen. There can be nothing in that; no weight can be laid upon it.

Sol. Gen. There is nothing in it: If any one kills a man when he is drunk, he must be hanged when he is sober.

Dunn. I desire he may be asked what time of night it was.

Eaton. It was about half an hour after ten.

Sol. Gen. Did you see any soldier there?

Eaton. Yes, one that looked like a soldier.

Sol. Gen. What passed between them?

Eaton. He, and some others, forced the soldier to pull off his hat.

Sol. Gen. Did you see Dammaree with them that forced him to pull off his hat?

Eaton. Yes.

Sol. Gen. Did you stay till he went away, or did you leave him there?

Eaton. I left him there.

Mr. Thompson. Did you hear him say any thing to that soldier?

Eaton. I heard him say, Pull off your hat.

Mr. Darnell. You say you saw several persons bring out materials: How many might there be?

Eaton. I cannot tell; but there were a great many.

Mr. Darnell. Did you see Dammaree bring any thing out?—*Eaton.* No.

Mr. Darnell. Where was he?

Eaton. I saw him first at the fire, and I left him there.

Att. Gen. My lord, there was a question asked by the counsel for the prisoner, which we did not then oppose; but we must be in your lordship's judgment, whether it can have any regard to the merits of this cause. For admitting he was drunk to that degree they would have it, that is no excuse of his crime; I do not find they clear that matter up: But if it be so, it is no excuse for felony or treason. The only question is, whether he was not assisting in this tumult?

L. C. J. It is almost necessary, that when a man goes upon such actions, he should be in drink; and I do not know but a little more drink might have carried him to St. James's, to have pulled that down.

Att. Gen. My lord, we have done with our evidence for the queen.

Mr. Whittaker. May it please your lordship, and gentlemen of the jury, I am of counsel for the defendant: The defendant stands accused of a very high crime; it is treason, and levying war against the queen, under whose government we are the happiest people in the world. And I agree with the gentlemen that are of counsel with her majesty, that a prosecution of this nature is very necessary, if these tumultuous actions amount to levying war; and that no tumults are to be borne. But the question is what share the prisoner had in this tumult? I agree these tumults are not to be endured in any civil society, nor will any body, I believe, say, that those methods are to be taken with, or any injuries whatever to be used, to the Dissenters. The law is their protection as much as of any other subjects of this kingdom: Ill ways of force and violence towards the Dissenters are unjustifiable, and these ways are abominable; and no such vile and base methods are to be used towards them. But that which we insist on, is, that the prisoner had no share of guilt in the action, and if so, then there will be no colour to say, that he is guilty of a riot, much less of levying war.

I beg leave just to state what has been sworn

against him, and then apply myself to give it an answer. The first witness was only to prove that there was a design, and that the witness heard a rumour among a great many people in the Temple, to pull down the meeting-house of Mr. Burgess; but he did not see Dammaree there, nor is it proved that Mr. Dammaree was any ways privy thereto: And we shall shew that he was innocent of any such design. The next witness is Orrel: He speaks directly to the prisoner at the bar; but I would observe that he does not speak to him till half an hour after ten, when he finds him in Lincoln's-Inn fields, at the fire of the materials of Mr. Burgess's meeting-house. Indeed he does speak as to his having some share in the disorders of the mob; but we shall shew that he was not a voluntary agent in that matter, and if so, that will sufficiently account for, and thereby we shall answer the evidence given by him. The next is Collier: We will shew him to be under a gross mistake, and that it is impossible that what he swears can be true: He confines himself to about nine o'clock, when this action of carrying out the branch, and throwing it into the fire with such a formal procession was. We shall shew where the defendant was till half an hour after ten; and that it is impossible for him to have the least hand in plundering or demolishing the meeting-house: And if that be answered, we think it will go a great way towards clearing him of this charge. The other witnesses only speak to his being among the rabble, hallooing amongst them: If we give an account how the prisoner came to be there, and that he was under a necessity to do as he did, and that it was a perfect accident, we hope the imputation of any crime for his being an actor in this matter, especially treason, will not be laid to his charge.

The prisoner's case was this: On Wednesday morning he had occasion to apply to the officers of the Blue Coat Hospital for a young fellow that he had a mind to have for his apprentice: He was with the beadles from ten in the morning till about two o'clock, and indeed he might have better employed his time, for they were all that while at an alehouse drinking. After this, he falls into company with one Wood, with whom he continued at another alehouse, till after ten o'clock at night. As they were drinking, there came a report that there was a fire in the Strand. The prisoner and the rest of the company were surprized, and got up; says the prisoner, there is a lady I serve with coals, that lives in the Strand, I must go and take care of her: He comes out of Water-lane into Fleet-street, and there he was stopped, and stood and talked some short time, and finding there was no fire in the Strand, he was going straight home; he thought the Strand was a troublesome place to go through then, and therefore chose to go the backway. His companion, Mr. Wood, went with him; but he being in a better condition than Dammaree, he got rid of the mob. But we shall prove that the prisoner was under a force, and by some of the mob dragged into the midst of them: And you observe by the witnesses against the prisoner, that they treated every body as spies that did not join with them; and when he was in the power of these unruly people, and acted under such force, no one can say he was a criminal. And there is no pretence to say, that this man was over-night, or at any time before, in any design, or was acting with the tumultuous persons the night before, but by mere accident came in among them at night, on the 1st of March. If he did misbehave himself there, yet we hope the court and the jury will be of opinion that he was not a criminal actor in that case.

If the defendant should be so unfortunate to be looked upon as a criminal actor, yet we hope the fact will not amount to more than a riot, and not to levying war, nor be high-treason. I shall not take up your lordship's time at present in speaking to that point, till we have called our witnesses, when we see how the matter then stands. If any guilt should appear against him, or the fact be doubtful whether he was a willing agent in these irregularities or no, the question will then be proper, whether it amounts to levying war, or not? We will call our witnesses, and hope that that point shall be reserved to us.

Mr. Darnell. My lord, I beg a few words on the same side: As this indictment charges the prisoner with levying war, there must be a proof of such facts as do amount to a levying of war. The witnesses for the queen have sworn, that the prisoner was at the fire in Lincolns-inn-fields, and that he there did halloo and throw up his hat. I believe that must be agreed, for my instructions are that he did so, and our witnesses will all say as much. But if that were all, then the witnesses against the prisoner must be equally guilty: For the chief of them, Orrel, says, he was forced to pull off his hat, and it was known to be the practice of the mob that night, to make all that passed by pay obedience, as they called it, to Dr. Sacheverell, and High Church. But, my lord, that which I humbly offer on behalf of the prisoner, is, that unless he were in the intention of pulling down the meeting-houses in general, and did something in execution of that general intention, it will not be a levying of war against her majesty. My lord, it is observed that this man was at the fire in his coat and badge, and we think a great deal may be inferred from his habit, that he was not in so evil an intention, as levying war against her majesty, whose servant he was so remarkably distinguished to be; but a man who had such a vile design to execute, would dress himself in such a manner as would best conceal him: Therefore we think his being present at the fire, and hallooing, and the rest of the evidence against him, is not enough to prove him in that general intention, and the execution of it.

The gentlemen of the other side thought it necessary to give some evidence of a design to

pull down the meeting-houses in general; and for that purpose proved that a great number of people were got together the night before in the Temple-walks, where there was a discourse by some of them, that they would pull down Mr. Burgess's meeting-house; but who those people were, I do not hear, nor do they by any means bring that home to the prisoner. And it is impossible for us to give an answer to that evidence, for to say the mob said so, is to say that nobody said so; and no witnesses can be falsified on such an evidence, for who that mob were is not explained. And, my lord, if there were no intention, or no general intention to pull down meeting-houses, we apprehend there can be no levying of war: if the fact were sudden and accidental, or only intended against a particular meeting-house, we must submit that to your lordship, whether if he were guilty of that fact, it would amount to high treason? We think all the cases go on this foundation, that there must be an intention to commit such like offence in general; and an intention to commit it to the particular injury of a person, or place, will not be sufficient. The witnesses against the prisoner say, there was an intention or discourse of going to Mr. Burgess's meeting-house, and no talk of any other; but when they were there, then they went to a second, and on to a third: but the original intent by the mob, doth not appear to be more than to go to Mr. Burgess's meeting-house, and to pull that down, and therefore is not a levying of war.

The case in print, in the second Anderson, 66, where the people in Oxfordshire conspire to assemble together, and move others to join them, and to pull down inclosures, was attended with this circumstance, that it was a general intent; and when they were got together themselves, they persuaded others to join with them; they conspired to go to several gentlemen's houses, and to take arms and horses, and to kill several gentlemen, and then to come to London; and their intent was general, not to pull down any particular inclosure, but all of them, for the enlargement of highways and commons, and so to reform that which the law ought to do.

So in the same book, in the Case of the Apprentices of London, 2 Anderson, 4, 5. For reducing the price of victuals in general, they agreed to break open the prisons, to release some of their companions, and to go to the lord mayor's house, and to kill him, and burn his house, and then to break open two other houses near the Tower, where there were arms for 300 persons: then to disperse libels, and to persuade other people to join with them.

There is a later case in my lord chief justice Keyling's Reports, which was the intention of pulling down bawdy-houses; there they took upon themselves regal authority, and would not take the course the law prescribed; but, my lord, those cases are attended with many worse circumstances than this is, for there they assembled with arms; there they had one they called captain to lead them, with his sword drawn; they had aprons, and such things on staves, which they called standards and colours, and in a military way they marched, and did pull down several houses, which they called bawdy-houses: that case is reported in my lord Keyling's Reports, fol. 70, and was adjudged levying of war, because the intent was general, and because they took upon themselves to do that which is the business of the queen, and the laws of the kingdom only to do. But, my lord, in that case, there are two persons who seem to have as great a charge of guilt upon them as the prisoner at the bar, and were discharged from those indictments for levying war, by the opinion of all the judges. One of them was found to be at the meeting where the discourse was of pulling down those bawdy-houses, that is William Green, that he went along with them, casting up his cap, and hallooing with a staff in his hand; but because there was not any particular act of force found to be committed by him, he was discharged. Another, one Bedell, was found among the mob, and when the guards came to disperse them, and he was pursued by one of the king's soldiers, he called out to his fellows to face about, and not to leave him. This we think is at least as strong an evidence against them as has been given against the prisoner at the bar, and yet they were both discharged by the opinion of all the judges.

L. C. J. That was not because of a defect in the evidence, but the imperfection of the verdict. The jury did not in their verdict expressly find that they were aiding and assisting, and therefore the Court could not supply the defect in the finding of the jury.

Mr. Darnell. The case in my lord Keyling is thus: "The jury find that a great number of persons, to the number mentioned in the indictment, armed as in the indictment, did meet together in Clerkenwell-green, in the county of Middlesex, on pretence of breaking open prisons, and releasing prisoners; that one of them, who had a half-pike in his hand, owned himself to be their captain: that they came so assembled together, to a place there called the New Prison, being a public prison of the county of Middlesex, and then and there said, That they came to search for prisoners, and break open the prison doors, and let out four prisoners, two whereof were committed thither for felony, and two for other offences; and that they being charged to depart, replied, They had been servants long, but now they would be masters; that some being taken, they cried, One die, and all die: that Lattimer was amongst them, and active in breaking of the prison, and was with the rest in the prison after it was broke open. And that Bedell was there, and being pursued by one of the king's soldiers, called out to the rest of the company to face about, and not to leave him."

My lord, where a fact is found, which fact is an aiding and assisting, we think it cannot be a

defect in the finding of the verdict, that he did not aid and assist. The facts they found, were only instances of aiding and assisting, and if these instances will be sufficient, then the Court were as fully possessed of them as they are now upon this evidence.

My lord, as to the fact, we think we have a very good case of it. We have proof, every hour of the day of the first of March, where the prisoner was, from morning till night. That he was not at the consult, the night before, with the mob, I think, is pretended on the other side. On the day in the indictment, we shall shew he was, from eight or nine in the morning, in the company of several persons, that we have here, until about ten at night, or later: that at that hour, he was at an alehouse in Water-lane in Fleet-street, where a gentleman's servant came in, and told the company there was a fire; the prisoner started up, and thought it had been in the house, but finding it was not, he went into the street; there it was reported, that Mr. Burgess's meeting-house was pulled down and burnt. In about an hour after that, he came along Fleet-street, and at Hercules-pillars-alley, near the Temple, there was a sempstress standing at her door, with whom the prisoner stayed talking some time, and whilst they were together, several people came by, and said, that Burgess's meeting-house was quite down, and burnt: from thence he went up Chancery-lane, and through Lincoln's-inn-fields, to see what was the matter, and found, as it was reported, that it was all burnt. The mob that were then about the fire, laid hold of him, and used him as they did all other people that came by, and made him pull off his hat, and halloo, High Church and Sacheverell; if not, they must have a knock on the pate. When they found he was much in drink, they pushed him about, and said, he should be their captain; and then they hallooed, and saluted him captain; but nothing of this came from himself, but they gathered about him, and there their captain was in the middle, more like to suffer, than command. My lord, the evidence against him does not pretend to charge him to be in Drury-lane, only that he went that way with them. Now, as to the intention, which they would suppose the prisoner had, of pulling down all the meeting-houses, I say, my lord, a man would not, from being a captain, and from so great a zeal to the cause, desert his companions, even in the first instance in which he could serve them: for I submit it, whether there is any evidence that he was in, or at any one of the meeting-houses, after the fire in Lincoln's-inn-fields? And if he was so forward, as the witnesses seem to charge him to have been, surely he would have gone to Drury-lane, at least, and done some act of his authority, but that is not proved. And, my lord, of our side, we shall prove, that he did not go to Drury-lane, but that, at 12 o'clock, he was in bed, at his own house in Lambeth; so that there will be no time to suppose him guilty of doing any thing after his entering upon his office, but only that he went off as soon as he could.

There was one of the witnesses, my lord, that said, he was in Lincoln's-inn-fields about eight or nine o'clock, and saw the prisoner there; now we shall shew, that till half an hour after ten he was engaged in company, in Water-lane: but there is a circumstance in our evidence, which we think, may reconcile that; for we can prove, that at Dr. Burgess's meeting-house there was a waterman, in his livery and badge, who was busy in pulling down, and carrying away the materials, but the prisoner cannot be supposed to be the same, for that person wore his own hair, and the prisoner has worn a wig many years; and, my lord, if my instructions are true, we have persons that knew the prisoner before, that will take it on their oaths, that it was not Dammaree; if so, then the witness that proves him to bring out the branch, we hope, will be reconciled by this, that there was another man in the same habit. It is an easy thing for a boy in a crowd, to make such a mistake; for that was the reason why he knew it to be Dammaree, because he had his waterman's coat and badge on: that man is not found out, but we hope we shall not stand in his place.

My lord, another circumstance we have of the innocence of the prisoner, is, that the next morning, when he got up, he went to his common business, to work upon one of the queen's barges, and there, I think, he was, when the messenger came to take him; he was not under the least apprehension, that he had done any thing that would make him guilty of a crime, especially so great a one as this he is charged with; if he had, he would have taken some care of himself; but his innocence was all the protection he made use of. We hope our evidence will satisfy your lordship and the jury, that some of the witnesses against him were mistaken; and ours will shew that he withdrew from the fire as soon as possibly he could; and we shall call some other witnesses to shew that he is a man of another character, than to be guilty of such an offence. The gentlemen of the other side said, he was doubly obliged to bear allegiance to her majesty; we own it, that he was her waterman; that he always behaved himself dutifully towards her majesty; that on other occasions he has expressed his abhorrence of any thing of this nature. My lord, if he is of a good character, zealous for the government, and has always expressed himself so, no man, that is of that character, can be guilty of such a crime, than which there can be none greater, to raise war against her majesty in the bowels of the kingdom; and the greatness of the charge is that which, we hope, will make your lordship and the jury require the more exact proof. We will call our witnesses to make out our case, and then submit it to your lordship and the jury.

Then *Thomas Allen* was sworn.

Mr. *Whittaker*. Do you know Mr. Dammaree?—*Allen*. Yes.

Mr. Whittaker. Was he with you the first of March last?—*Allen.* Yes.

Mr. Whittaker. At what time?

Allen. About ten o'clock.

Mr. Whittaker. On what occasion was he with you?

Allen. To have an apprentice out of Christ's-hospital.

Mr. Whittaker. Was it ten in the morning or in the evening?—*Allen.* In the morning.

Mr. Whittaker. How long did you stay together?—*Allen.* Until about twelve.

Mr. Whittaker. Where did you leave him?

Allen. At a public-house in Grey-friars.

Mr. Whittaker. Who did you leave him in company with?

Allen. There was one Wood, that went out of the house with him.

Then *Stephen Pink* was sworn.

Mr. Whittaker. Do you know Dammaree?

Pink. Yes.

Mr. Whittaker. Was you with him the first of March last?

Pink. Yes; on Wednesday, the first of March last.

Mr. Whittaker. About what time of the day did he come to you?

Pink. About ten of the clock in the morning.

Mr. Whittaker. How long did he continue with you?

Pink. Until between two and three.

Mr. Whittaker. What business was he about?

Pink. He came to the hospital, on account of taking a boy to be his apprentice.

Mr. Whittaker. What time did you part with him? And where?

Pink. I left him at the Cock at Amen-corner, with Mr. Wood, between two and three o'clock.

Then *S. Wood* was sworn.

Mr. Whittaker. Was you in company with Dammaree, on the first of March last?

Wood. I was in company with him, from nine in the morning until past ten at night.

Mr. Whittaker. How did you employ yourselves all that while?

Wood. We went from house to house; we were drinking from one friend's house to another.

Mr. Whittaker. What was the last ale-house you was at with him?

Wood. It was at the Bell, in Water-lane.

Mr. Whittaker. What time was it when you was there?

Wood. It was a quarter after ten.

Mr. Darnell. From the time that Pink left you at Amen-corner, was you in company with him until a quarter after ten?

Wood. Yes, I was.

Mr. Darnell. Was he not out of your company all that time?—*Wood.* No.

Mr. Darnell. I suppose you was not idle all that while; was you drinking?

Wood. Yes; we were drinking all that time.

Mr. Whittaker. What news had you about a fire?

Wood. There was one John Light, a postilion, came in, and said there was a great fire, and all the street was light. Mr. Dammaree starts up, says he, I have a gentlewoman in the Strand that is my acquaintance, I must go and assist her.

Mr. Whittaker. Was there any talk of the fire being in the Strand?

Wood. Yes, in the Strand.

Mr. Darnell. Who told you it was there?

Wood. It was John Light.

Mr. Darnell. What did Dammaree do then?

Wood. He said, he must assist the gentlewoman.

Mr. Darnell. What time did you come out of the ale-house?

Wood. It was not half an hour after ten.

Mr. Darnell. Did you come out of the ale-house with him?—*Wood.* Yes.

Mr. Darnell. Did you stop any where?

Wood. No where as I know of. He was at Temple-bar, making way to the gentlewoman, and the crowd forced him up Sheer-lane, into Lincoln's-inn-fields; and when they saw his badge, they said, Damn ye, you are the queen's waterman, you shall go with us.

Mr. Whittaker. Give an account of what passed when he was there.

Wood. I saw him stand against the dead wall, and they took hold of him, and said, Damn ye, you are the queen's waterman, you shall go with us, or we will tear you in pieces.

Mr. Whittaker. Did he go willingly? Or what did he say?

Wood. He said, God bless the queen, gentlemen, I will do any thing you would have me, do not knock me on the head.

Mr. Whittaker. Whereabout was this?

Wood. It was, I think, just by the street they call Duke-street.

Att. Gen. You say you was with him all this while, and came along with him, and at Duke-street, you say——

Wood. At Duke-street, I think they call it, as you go to Turnstile, just at the wicket, as you go through Lincoln's-inn.

Att. Gen. Where did they lay hold of him?

Wood. Just at Lincoln's-inn-gate.

Att. Gen. But I thought he had been pulled by the mob at Temple-bar?

Wood. We were going to the gentlewoman's house.

Att. Gen. Why, I thought she lived in the Strand; Was Lincoln's-inn-fields the way to the Strand?

Wood. The multitude of people forced him from Fleet-street up Sheer-lane.

Att. Gen. Where did you meet them at first?

Wood. He was going through Temple-bar to the Strand, and they said, here is the fire; so we turned up the lane: There was no passing through to the Strand, there was such a crowd.

Att. Gen. But you found no crowd afterwards, I suppose. Was the press so great at Temple-bar that you was forced up Sheer-lane?

Wood. Yes.

Att. Gen. You did not touch the ground all the while, did you?

Wood. I saw them force him all the time.

Att. Gen. Did they force you too?

Wood. No, I went along.

Att. Gen. Was you forced up from Temple-bar to Lincoln's-inn-gate?

Wood. Forced? No, Sir.

Att. Gen. Why, he is as big a man as you, how came they to force him, and not you?

Wood. He was taken hold of by the mob in Duke-street.

Att. Gen. Now you say, the first time he was touched by them was at Duke-street; can you say you was forced from Temple-bar to Lincoln's-inn-fields?

Wood. Yes, we were forced by violence.

Att. Gen. Was you forced for one?

Wood. Yes, we were forced among the crowd of people.

Just. *Tracy.* You say you was carried in the crowd from Temple-bar; How far was you carried?

Wood. To Duke-street.

Just. *Tracy.* Where is Duke-street?

Wood. It is behind Lincoln's-inn; you go through a little wicket; it is where the shop-keepers are.

Sol. Gen. Where is this which you call Duke-street?

Wood. I am not well acquainted with the streets.

Sol. Gen. How came you then to call it Duke-street?

Wood. They tell me it is called so: It is a narrow street, just behind Lincoln's-inn. When you come through the wicket, you must turn of the right hand to go to Turn-stile.

L. C. J. You say you went to Temple-bar to go into the Strand, and then you met so great a press, that you could not go through. Where did you go then:

Wood. I went up Sheer-lane.

L. C. J. Did the crowd force you up?

Wood. Yes.

L. C. J. Did all that crowd that you met at Temple-bar go up Sheer-lane?

Wood. Some went one way, and some another.

L. C. J. Which side of Fleet-street was you when you went to Temple-bar?

Wood. On the side next the Temple.

L. C. J. Then how came you to cross the street, when there was such a crowd you could not get along?

Wood. They forced us along.

L. C. J. I ask you, if there was such a crowd, that you could not get through, how could you get cross the street to Sheer-lane?

Wood. They all went that way.

L. C. J. Then you say, that all that crowd that filled up the street, so as to hinder your passing into the Strand, were all received into Sheer-lane: When you was got up into Sheer-lane, where did the crowd carry you then?

Wood. Into Lincoln's-inn.

L. C. J. When you was in the square, where did you go then? Did the crowd carry you through the wicket?

Wood. They forced as hard as ever they could force.

L. C. J. Then you say, when you was in the open square, you could not avoid being carried by the crowd through the wicket. Consider what you say, you are on your oath. How could you, when you was in the square, be forced by the crowd through the wicket? In the next place, where did you get out from the crowd, when you was got through the wicket? How did you get from the crowd?

Wood. I came down Lincoln's-inn, into Sheer-lane; there is a way that goes backwards, behind the houses: I went away, and left them all.

L. C. J. When you left them, where was Dammaree?

Wood. They forced him to the fire.

L. C. J. Where did they lay hold of him?

Wood. It was at the dead wall at Duke-street.

L. C. J. Is that between the wicket and the fields?

Wood. Yes, it is opposite to the wicket.

L. C. J. I ask, was it between the wicket and the fields?—*Wood.* Yes, it was.

L. C. J. I thought you had not gone at all of the right hand towards the fields, but that you turned down towards Sheer-lane.

Wood. No, there was no getting that way, I went down into Chancery-lane.

L. C. J. Now, tell me which way did you get into Chancery-lane, if you were at the backside of Lincoln's-inn, and did not go into the fields? Is not the other way the way to Sheer-lane?

Sol. Gen. How could you get into Chancery-lane, without going by Sheer-lane, or into Holborn?—*Wood.* I went the backway.

Sol. Gen. Then tell us which way did you go.—*Wood.* I turned on the left hand.

Sol. Gen. Where was you standing when you turned?—*Wood.* Just at the wicket.

Sol. Gen. Did you go no further?

Wood. No, no further.

Sol. Gen. Then how could you see the mob lay hold of him at the dead wall? Pray tell us where, and in what manner you got from the mob to go home?

Wood. I came down into Fleet-street.

Sol. Gen. Where did you come into Fleet-street?

Wood. Just against the lower Temple-gate.

Sol. Gen. Which do you call the lower Temple-gate, that next to the bar, or the other?

Wood. I mean that next to Fleet-bridge.

L. C. J. At that time might not Dammaree and you have gone away into Chancery-lane, or where you would?

Wood. No, they took hold of him.

L. C. J. If they seized him in that place, whither did they take him? what did they do with him?

Wood. They took hold of him, and pulled him, and hauled and forced him by violence.

L. C. J. Well, did you see him afterwards? Did he not go along with you?

Wood. No, when I saw they laid hold on him, I left him.

L. C. J. Then you saw nothing of what passed in the fields?

Wood. No; nothing of that.

L. C. J. Now you have been telling us that it was a quarter after ten when you parted from the Bell, in Water-lane: How came you to be so exact as to the time? How could you, that had been drinking twelve hours, be able to tell to a quarter of an hour what time it was? What say you to it?—[No answer.]

Mr. Whittaker. Do you know the names of the streets about Lincoln's-inn?

Wood. I know the street again.

L. C. J. He has described the streets sufficiently; no advantage must be taken of his mistaking the name.

L. C. Baron. You speak of some that took hold of him, whereabout was that?

Wood. At Duke-street, behind Lincoln's-inn wicket.

L. C. Baron. You said, as soon as they laid hands on him, you left him: Was it so or not?—*Wood.* Yes.

L. C. Baron. Then you say no more; you saw no more what was done by him, or with him, after that.—[No answer.]

Then *Fucard* was sworn.

Mr. Whittaker. Did you see Mr. Dammaree on the first of March last?

Fucard. I keep the Bell ale-house in Water-lane; he came to my house about two, and staid there till half an hour after ten.

Mr. Whittaker. Are you sure of that?

Fucard. I am sure of it.

L. C. J. Was he full of drink then?

Fucard. Yes, full of drink.

Mr. Darnell. Do you remember that any gave an account of a fire in the Strand?

Fucard. I know nothing of that.

Mr. Darnell. Do you know on what occasion he went away.

Fucard. He went on no occasion that I know of, but being in drink.

Mr. Darnell. Did you hear any thing of a fire?—*Fucard.* Nothing.

Att. Gen. Where do you live?

Fucard. At the Bell in Water-Lane.

Att. Gen. What countryman are you?

Fucard. A German.

Att. Gen. Did you take any account when he went away?

Fucard. Yes, about half an hour after ten.

Att. Gen. How came you to take so particular notice of the time?

Fucard. I cannot tell how it came.

Sol. Gen. Did nobody come in and tell of a fire?—*Fucard.* I heard nothing of it.

Then *Charles Bishop* was sworn.

Mr. Whittaker. Was you with Dammaree the first of March last?—*Bishop.* Yes.

Mr. Whittaker. How long did you stay with him?

Bishop. Until half an hour after ten.

Mr. Whittaker. Did any body bring any account of a fire?—*Bishop.* Yes, our postillion.

Mr. Whittaker. What was done then?

Bishop. We staid an hour after that.

Mr. Darnell. When was it that they brought the news of the fire?

Bishop. It was half an hour after eight, or nine.

Mr. Darnell. Pray give an account what passed after?

Bishop. We had a pound of sausages, and smoked a pipe.

Mr. Whittaker. When he went away, on what occasion did he say he would go?

Bishop. He said nothing of the fire, but parted from me, and was much in drink.

Mr. Darnell. How long did he stay after the talk of the fire?—*Bishop.* About an hour.

Mr. Darnell. Did you leave him there, or did he leave you?

Bishop. He left me; I staid a while after, and I saw him afterwards in Fleet-street talking with a woman.

Mr. Darnell. Whereabout was that?

Bishop. Just by the Green-Dragon tavern.

Mr. Darnell. Did you speak with them there?

Bishop. No; he was so much in drink, that I did not care to speak with him.

Mr. Justice Tracy. Was Wood with him then?—*Bishop.* No; I did not see him.

L. C. J. Did Wood go with him from you?

Bishop. Yes.

L. C. J. Do you remember that when the news was brought, he said there was a gentlewoman in the Strand that he must take care of?—*Bishop.* No; I do not remember it.

Mr. Darnell. Our intent in calling this witness, is to shew that he was at that house till half an hour after ten.

L. C. J. He says, the news was brought at half an hour after eight or nine, and that they parted half an hour after ten; and when he is asked how long they staid after the news, he says about an hour.

L. C. Baron. How long did you sit after the news of the fire?

Bishop. I cannot exactly tell; but we staid until half an hour after ten.

L. C. Baron. When you saw him at the tavern door, was Wood with him?

Bishop. No.

L. C. Baron. Pray, what time was it you saw him there?

Bishop. It was about three quarters after ten.

Then *John Light* was sworn.

Mr. Whittaker. Was you at the Bell ale-house the first of March last with Dammaree?

Light. Yes, I came in there.

Mr. Whittaker. At what time of night?

Light. Between eight and nine o'clock.

Mr. Whittaker. What account did you bring of a fire?—*Light.* I brought in the news.

Mr. Whittaker. How long did you tarry with him after that?

Light. I did not tarry at all; I came in for a pint of drink, and went away.

Mr. *Whittaker.* Was you not in his company after that?

Light. I came into the house before they went away.

Mr. *Whittaker.* What time of night was it when you came in the second time?

Light. About ten o'clock.

Mr. *Whittaker.* How long did they stay after that?

Light. Until between ten and eleven.

Then *Ward* was sworn.

Mr. *Whittaker.* Did you see Dammaree the first of March at night?—*Ward.* Yes.

Mr. *Whittaker.* What time of night was it?

Ward. Half an hour after ten.

Mr. *Whittaker.* Where did you see him?

Ward. I left him at this gentlewoman's shop.

Mr. *Whittaker.* Where does she live?

Ward. In Fleet-street.

Mr. *Whittaker.* In what condition was he when you saw him there?

Ward. He was drunk.

Mr. *Whittaker.* Did you see him do any thing indecent?

Ward. Yes, he reeled about, and asked what is the matter? We told him there was a disturbance; says he, I hear there is a fire.

Mr. *Whittaker.* What did he do after that?

Ward. I left him there.

Mr. *Whittaker.* Was any body with him?

Ward. No, none but himself.

Mr. *Darnell.* How long before had the fire been?

Ward. A long time; there were forty people had come and said, that all the inside of the meeting was burned.

Mr. *Darnell.* How long before that?

Ward. I believe it might be an hour before; about eight o'clock: I was going into the city, I saw a great many people, and they had the two irons that bore up the top of the pulpit: what is the matter, said I? Why, say they, those men have the bars that kept up the top of Mr. Burgess's pulpit; and I knew them to be those bars, for I have seen them often.

Mr. *Darnell.* Where was it that you saw them?—*Ward.* It was at St. Bride's church.

Mr. *Darnell.* You say the fire had been an hour before you saw him in Fleet-street?

Ward. Yes.

L. C. Baron. Who told you they were the bars?

Ward. The people that flocked after them.

Then Mrs. *Giles* was sworn.

Mr. *Whittaker.* Do you remember the night that this disturbance was, that you saw Mr. Dammaree?

Mrs. *Giles.* I saw him, I believe about a quarter after ten; he stood and talked with me.

Mr. *Whittaker.* How long did he stay?

Giles. Above a quarter of an hour.

Mr. *Whittaker.* How do you know it was that time?

Giles. After he was gone, I did but lock up my doors, and go up stairs, and it struck eleven.

Mr. *Whittaker.* What condition was he in?

Giles. Very drunk.

Mr. *Whittaker.* How long had the fire been before that?

Giles. A long time, some hours: the people that went along, said, they had burnt the inside of the meeting. About eight o'clock they were burning it, and about ten o'clock they said it was all burnt.

Just. *Tracy.* Did you hear him talk of any fire at a friend's house in the Strand?

Giles. He said nothing of that, but asked me if there was not a fire: I said there was a fire in Lincoln's-inn-fields.

Sol. Gen. Was any body with him?

Giles. Nobody but himself.

Att. Gen. Was you acquainted with him?

Giles. I never saw him before, that I know.

Att. Gen. Then you was an utter stranger to him? How came he to be talking with you?

Giles. I was standing at the door with some others, and he came to us.

Att. Gen. Did he come to you on any business?

Giles. He came as he was walking along, and asked me, what was the matter?

Att. Gen. Had not you been asked that question by a great many before?

Giles. By a great many.

Att. Gen. Do you remember who asked you the question before him?—*Giles.* No.

Att. Gen. Then how came you to take more notice of him than of others that asked the same question?

Giles. Because he stood a great while, and talked, and had the queen's coat on: he was very fuddled, and stood and talked with me, and that made me take notice of him.

Att. Gen. How came you to be subpœnaed?

Giles. Because I had said to several gentlewomen, that there was such an one taken up; they said he was pulling down the meeting-house: I said it was impossible, for that he was with me at that time, and came from the city-wards, and that made me enquire into it.

Att. Gen. Then you was sent to him, was you?

Giles. No; I did not go, but a gentlewoman in Arundel-street, one Mrs. Pinkney, did: I know nothing of him: but because I thought he could not be the man, I was willing to clear him if I could.

Mr. *Whittaker.* How long have you lived where you now do?

Giles. I have lived there twenty years.

Sol. Gen. What did you talk about? He could not be a quarter of an hour asking that question.

Giles. No; but a great many came by, and asked, who are you for? and what are you? And he said, you may see who I am for; I am for the queen.

Sol. Gen. Then he did not talk with you so long?

Giles. I was at the door all the time, and he talked with me and others.

Damm. I desire to ask her, whether I said any thing of a nurse-child?

Giles. He said he had nursed my lord mayor's children.

Att. Gen. What else did you talk of?

Giles. I advised him to go home; and I turned about and went in, and he said, Good night, Mistress.

L. C. Baron. Did he talk sensibly?

Giles. He talked as if he was drunk.

L. C. Baron. He gave an account you say of nursing children: how came that?

Giles. I said to him, I wished my lord mayor would send out the guards to quell the mob: says he, I nursed his children; that was the occasion of it.

Mr. *Darnell.* Did he say any thing of any other nurse-children?

Giles. Yes; he said he nursed sir Richard Hoare's; did you nurse them, said I? Yes, says he, we did at home.

Att. Gen. Are you sure that is the man?

Giles. Yes; for I went to Newgate to see him.

Mr. *Thompson.* How came you to remember the time so exactly?

Giles. Because I had stood at the door so long, and heard several go by, and say, it was such an hour.

Mr. *Whittaker.* How near do you live from St. Dunstan's clock?

Giles. Just over-against it.

Mr. *Whittaker.* We will now call some witnesses, to shew that he was under force and constraint.

Then Mr. *Cummins* was sworn.

Mr. *Darnell.* Do you remember that you saw Dammaree the night that the disturbance was at the meeting-house?

Cummins. My lord, I do not know the man; but I did see a man with the queen's coat and badge; I keep a shop in Lincoln's-inn-fields, and a house in Turnstile: I being robbed there some time before, I went between the two shops to see they did me no harm: I sent my servant to bed, and going to see if he was there, I did not find him; but going back again by the fire, the mob cried, Huzza, Sacheverell. I thinking of the boy, did not mind to pull off my hat, and they struck me over my head, and then I was forced to halloo as they did. I met my boy presently, and sent him to bed: I went away immediately, and by the fire I saw that man, and some people had him by the shoulders, and thrust him about, some one way, and some another: sometimes he was at a distance from the fire, and sometimes very near it; but he seemed as if he could not stand.

Mr. *Darnell.* What time of night was this?

Cumm. As near as I can guess, it was about eleven o'clock.

Mr. *Darnell.* Did you see the mob lay hands on him?

Cumm. I saw them push him from hand to hand, and I could compare him to nothing but a dog in a ring, they tossed him up and down; but I do not know the man, but only by the coat.

Mr. *Darnell.* Do you take it the mob made themselves merry with him, or, that he aided them?

Cumm. I cannot be a judge of that matter.

Att. Gen. What time did you shut up your shop?

Cumm. I shut it up, as near as I can guess, at seven o'clock, because there was a great mob: my next neighbour would not keep open any longer; so we shut up our shops.

Att. Gen. What time did you send your servant to bed?

Cumm. I sent him out about three quarters after ten, or more, and I run down after him.

Att. Gen. How long was it after you sent him away, that you went to look after him?

Cumm. I went presently after him; I got to the shop before him.

Sol. Gen. Were not other people pushed about besides him?

Cumm. I saw nobody pushed about but him that had the queen's cloth on; I did not stay, but made all the haste I could away.

L. C. J. Are you sure the prisoner is the man you speak of?—*Cumm.* No.

L. C. J. Do you believe it is he.

Cumm. I cannot tell; I cannot take upon me to say, for it was a man with the queen's cloth on.

L. C. J. Whereabout did you see him?

Cumm. I was coming up the dead wall under Lincoln's-inn garden to see for my servant, and at the lower end, just by the shops, there was a great number of people made a ring, like that where they play at cudgels: he was in the middle of them, and they shoved him about from one to another: I met immediately with my boy, and I took him a box on the ear.

L. C. J. I only want to know the place where you saw him.

Cumm. In Lincoln's-inn-fields, within the rails, under Lincoln's-inn garden, towards Portugal-row; I believe it might be seven or eight yards within the rails.

Damm. My lord, this shirt which I have on now, was torn by them.

Then *Mary Reading* was sworn.

Mr. *Whittaker.* Was you near this fire?

Reading. My lord, I heard there was a great fire, so I went out, and saw a great light; I saw one of our neighbours; says she, where is this fire? I said, I heard it was in Lincoln's-inn-fields; at that, says she, my brother was here just now, I wish he is not gone to it. She asked me to go along with her; we went into Lincoln's-inn-fields, and saw the fire. As we stood there, I saw a sconce brought, and thrown into the fire. I saw a little short man, a black man, in black hair, carry the sconce round the fire three times.

Mr. *Whittaker.* What dress was he in?

Reading. I could not see what dress; I saw he was in waterman's cloaths, but I could not see the colour; but that is not the man.

Mr. *Darnell.* Is that the man?

Reading. No; he was a little short man in his own hair.

Mr. *Darnell.* Was there any more than one sconce thrown in?

Reading. I saw no more.

L. C. J. You could not say what colour his cloaths were; and can you say that this was not the man?—*Reading.* Yes.

Mr. *Darnell.* Did you see any thing more?

Reading. When I came away, the fire was pretty well burnt, and coming along, we met with a waterman; says the woman that was with me, Lord bless me! Here is one of the queen's watermen. What have you to say to the queen's waterman? says he: nothing, said she: but God bless the queen, and her waterman too. Says he, you are a jolly girl, and I will kiss you.

L. C. J. Whereabouts did you meet that waterman?

Reading. As we were going from the fire, we met him going up to it; and this is the man that we met going towards the fire when we came from it.

L. C. J. Was that before or after the burning the sconce?

Reading. It was afterwards.

L. C. J. How long was it after?

Reading. I can safely take my oath, it was half an hour.

L. C. J. Was any thing thrown into the fire after that man came?

Reading. I never went thither after it.

Att. Gen. Where do you live?

Reading. In St. Andrew's-street, near the Seven Dials.

Att. Gen. Did you ever see him before?

Reading. Never before.

L. C. J. Where was you going when you met him?

Reading. I was going homewards, towards Great Queen-street, and I met him coming towards the fire.

L. C. J. Was there at that time any fire in Drury-lane?

Reading. They were pulling down the meeting-house in Drury-lane.

L. C. J. Then you met him coming from Queen-street, a little time after that they had begun to pull down the house in Drury-lane; and about half an hour after the branch was thrown into the fire in Lincoln's-inn-fields?

Reading. Yes, it was.

L. C. Baron. Did you see that he was in drink?

Reading. I believe he was; for the woman he kissed said, he smelt strong of liquor.

Att. Gen. How long was this after the sconce was thrown in.

Reading. It was about half an hour; I believe rather more than less

Then *Isabel Prince* was sworn.

Mr. *Whittaker.* Was you at the fire in Lincoln's-inn-fields the first of March last, at night?—*Prince.* Yes.

Mr. *Whittaker.* Do you remember who it was that carried the brass sconce?

Prince. Sir, I went to the fire, because I have a brother lives by there, and was afraid that he might come to some damage. As I was going, there was a vast crowd, and a great ring; and in that ring, as I could see between them, I saw a little man with black hair, very short; he carried the sconce three times round the fire, and then threw it in.

Mr. *Whittaker.* What sort of man do you say he was?

Prince. He was a black man, a short man with his own hair.

Mr. *Whittaker.* Is that he?—*Prince.* No.

Mr. *Whittaker.* Was he in a waterman's habit?

Prince. Yes; but I cannot say he had a badge.

L. C. J. Was you with the last witness?

Prince. Yes.

L. C. J. How near was you to the fire when you saw him carry it round?

Prince. As near as I could get for the crowd, I believe as near as that place. [Pointing to the other side the Court.] I could not go any nearer, for the fire was vastly hot.

L. C. J. Was there any crowd there?

Prince. Yes, a great one; but I was of the outside of the ring.

L. C. J. Then if he was a little man, and you are no tall woman, and you were of the outside of the ring, how could you see him?

Prince. Because I looked through under their arms as they passed along: The crowd was still going to fetch fire, so that they many times abated and came again.

L. C. J. You say you distinguished his hair to be black; what colour was his coat?

Prince. I cannot well tell; but I believe it was either grey or black.

L. C. J. Had he any badge?

Prince. I believe he had.

L. C. J. Where was it?

Prince. I saw it upon his arm.

Mr. *Whittaker.* Was the crowd greater about the fire at some times than others?

Prince. Yes, the crowd abated; some went to Holborn, and some to the right, and some to the left.

L. C. J. The last witness said, the fire was burnt to a coal.

Prince. Yes, the fire was burnt to a coal; and as I was going home, I met this man; says I, there goes the queen's waterman: says he, What have you to say to the queen's waterman? Nothing, says I, but God bless the queen, and her waterman too. And then he gave me a kiss, and there we parted.

L. C. J. I take notice of that expression, that you said, there goes the queen's waterman: Had you heard any talk before of the queen's waterman?

Prince. No, but I heard that the guards were coming.

L. C. J. You did not take the waterman for one of the guards, did ye?—*Prince.* No.

L. C. J. But had you heard any one speak of the waterman before?—*Prince.* No.

L. C. Baron. Where did you meet him, when you had that favour from him?

Prince. Within the rails; he was going to the fire, and I was going from it.

L. C. Baron. Whence did he come?

Prince. I think either from the corner, by the Duke of Newcastle's, or from Clare-market; I do not know which, for I met him within the rails.

Then *Rowland Walker* was sworn.

Mr. *Whittaker.* Did you see Dammaree the first of March last?—*Walker.* Yes.

Mr. *Whittaker.* At what time?

Walker. At half an hour after eleven.

Mr. *Whittaker.* Where did you see him?

Walker. At Strand-bridge, I carried him in my boat.

Mr. *Whittaker.* Where did you carry him?

Walker. Cross the water.

Mr. *Darnell.* Did you observe any clock strike?

Walker. Yes; Somerset-house clock struck two quarters past eleven before he came into my boat.

Mr. *Darnell.* Where did you carry him?

Walker. To Marsh's causeway.

Mr. *Darnell.* Does he live there?

Walker. Yes, just by.

Mr. *Darnell.* Did you see him home?

Walker. No: I helped him out of the boat; but I did not go home with him.

Att. Gen. Was you desired to take notice what o'clock it was?

Walker. No; but I was in my boat waiting, and heard the quarters strike.

Att. Gen. You say it struck the quarters; how many strokes denotes it?—*Walker.* Two.

Att. Gen. Then you did not hear what the clock itself struck?

Walker. Yes; I heard the clock strike eleven before he came down.

Mr. *Darnell.* What hour did the clock strike, before it struck the two quarters?

Walker. The great clock struck eleven, and I sat in my boat and smoaked a pipe, and at the second stroke after eleven I took him into my boat.

L. C. Baron. What condition was he in?

Walker. Very much in drink.

Then *Hester Hales* was sworn.

Mr. *Whittaker.* Did you see Mr. Dammaree the first of March last, at night?—*Hales.* Yes.

Mr. *Whittaker.* At what time?

Hales. A little after eleven.

Mr. *Whittaker.* At what place did you see him?—*Hales.* At the Maypole, in the Strand.

Mr. *Whittaker.* Which way was he going?

Hales. I was coming out of Fleet-street, and he was going the other way.

L. C. J. Which way was you going?

Hales. I was going out of Fleet-street home, where I live.

L. C. J. Where do you live?

Hales. Over against Somerset-house.

L. C. J. Where did you meet him?

Hales. I met him by the Maypole.

L. C. J. What place did you come from?

Hales. I came out of New-street.

L. C. J. Which way do you apprehend he had come?

Hales. I did not ask him; but he was in the Strand, going along towards Temple-bar.

L. C. J. Whereabouts in the Strand?

Hales. On the other side the Maypole, going towards Strand-bridge.

L. C. J. What o'clock was it then?

Hales. A little after eleven.

Att. Gen. What o'clock do you take it to be now?

Hales. What o'clock! Why, it is past one.

Sol. Gen. Which side of Drury lane was it you saw him?

Hales. On this side Drury lane.

Then *Harbins* was sworn.

Mr. *Whittaker.* Did you meet the prisoner at the bar on the first of March last; and at what time?

Harbins. I met him in the Strand, as I was going home to my lodging about eleven o'clock: He was in drink, and I said to the gentlewoman with me, Pray have a care of the man, for he is in drink.

Att. Gen. Whereabouts did you meet him?

Harbins. I met him about three doors from the Swan tavern.

Mr. *Whittaker.* My lord, we will call some witnesses to his reputation, to shew how he has all along demeaned himself.

Then *John Michaelmas* was sworn.

Mr. *Whittaker.* Do you know the prisoner at the bar?—*Michaelmas.* Yes.

Mr. *Whittaker.* Do you live in the same parish?—*Michaelmas.* Yes.

Mr. *Whittaker.* What are you there?

Michaelmas. The church-warden.

Mr. *Whittaker.* What behaviour is he of?

Michaelmas. Of very good behaviour.

Mr. *Whittaker.* Is he disaffected to the queen and government?*

Michaelmas. I believe no man better affected.

Mr. *Whittaker.* Did you ever hear him talk disrespectfully of the queen or government?

Michaelmas. No; quite otherwise: In Feb. last he came to me, and asked me, Do you hear what a noise this mob makes? Yes, said I; I am sorry for it: and I am sorry too, says he: They say the queen is aggrieved at it, and it troubles me to think of it.

Mr. *Whittaker.* At any times when there has been public rejoicings for any victories, how has he behaved himself?

* See in this Collection vol. 9, pp. 621, 1099, vol. 13, pp. 371, *et seq.*

Michaelmas. The most forward man in them.

L. C. J. Is he a sober man?

Michaelmas. Yes.

L. C. J. Does he use to drink?

Michaelmas. I have seen him in drink.

L. C. J. What kind a man is he then?

Michaelmas. A quiet temper; not at all quarrelsome, but a fawning, loving temper.

L. C. J. Did you ever hear him talk about the meeting-houses?—*Michaelmas.* No.

L. C. J. I ask that question, because there has been a gross mistake spread abroad as if they were serving the queen, when they made that bustle; that is a mistake that has gone abroad.

L. C. J. Did you ever hear him say any thing of Dr. Sacheverell?—*Michaelmas.* Yes.

L. C. J. What did he say of him?

Michaelmas. He said, he wished the Sermon had never been preached, or printed; and then this trouble had not been.

Mr. *Whittaker.* Did you see him after this?

Michaelmas. Yes, I saw him the next day at noon?

Att. Gen. Had you any discourse about the meeting-houses?

Michaelmas. No, none at all.

Mr. *Darnell.* Where did you see him the next day, and at what time?

Michaelmas. At twelve o'clock I saw him pass by my door.

Mr. *Thompson.* You have conversed with him: did you never hear him give his opinion of the Dissenters and the meeting-houses?

Michaelmas. No, never.

Then Mr. *Pottinger* was sworn.

Mr. *Darnell.* How long have you known Mr. Dammaree?

Pottinger. I have known him eighteen or nineteen years.

Mr. *Darnell.* Do you take him to be disaffected to the government?

Pottinger. No; not in my opinion.

Mr. *Darnell.* When you conversed with him how has he declared himself?

Pottinger. Always for the government as much as any man in our parish, and I believe has been as serviceable as any man in getting men to serve the queen when he was master of the company.

L. C. J. What are you?

Pottinger. I call myself a timber-merchant.

L. C. J. Then I suppose you have not had much conversation with a waterman?

Pottinger. Not a great deal.

Then Mr. *Moor* was sworn.

Mr. *Whittaker.* How long have you known Mr. Dammaree?

Moor. I have known him above thirty years?

Mr. *Whittaker.* What character has he had?

Moor. An honest, civil man, and as good a neighbour as can be.

Mr. *Whittaker.* How has he carried himself to the queen and government?

Moor. I never heard him say a word against the queen, or government, but was always willing to serve the queen; and particularly when he was master of the company, in sending men into the service.

Mr. *Whittaker.* How did he behave himself in that?

Moor. He did great service to the queen.

Mr. *Whittaker.* Were there a great many men taken up by him?

Moor. He took up a great many men.

Then *John Hatfield* was sworn.

Mr. *Whittaker.* How long have you known the prisoner at the bar?

Hatfield. Almost twenty years.

Mr. *Whittaker.* How is he with respect to his principles towards the government?

Hatfield. I never knew any ill by him: I never heard but he was an honest, careful man; I never heard but that he loved the queen.

L. C. J. As to the matter of his reputation, I think it is pretty well established, and they say nothing against it.

Att. Gen. We come to try the man for this fact only, and have nothing to say to any former transactions.

Mr. *Whittaker.* My lord, we will call no more witnesses, unless the queen's counsel give occasion in their reply. We think we have proved that he was not a free agent, but under the utmost force. We hope we have made it appear to the satisfaction of your lordship, and of the jury, that this man, though he had the misfortune to be present when these tumults and disorders were, yet he had no share that was criminal in them.

Gentlemen, you will remember that though one person did swear that he carried the sconce in procession, yet we have proved that in point of time it was impossible he should be there, and that there was another person that did it. As to the other witnesses, they take upon them to say, that he did halloo with the mob; we must appeal to you, the gentlemen of the jury, and do not doubt but you have taken notice of what has been sworn, that he was under a force; and when he was in that condition, and in fear of such a tumultuous assembly, if to save himself he did so far comply with them, that will not make him guilty of treason, and levying war against the queen.

I must observe as to Orrel, that witness that seems to affect us most, and carries us so far as towards Drury-lane, he does not pretend to give an account of any thing that concerns us precedent to that. Now if this man was got into such a tumult as this, and he did go along with them a little way, and they cannot shew that he acted any thing afterwards, there will be no reason to think him guilty of any crime, at least, not of levying war, and so not of high treason. We hope we shall stand fair in the opinion of the jury, that he was not a voluntary or free agent in these disorders: but if we

should be so unfortunate as to be thought otherwise, yet we must insist, that that point which the queen's counsel insist on, to wit, that the fact attempted to be proved on the prisoner is levying a war, is not yet so settled a point, but may deserve a further and deliberate consideration. I am sensible there is one case of the London Apprentices, which was in king Charles the second's time; there was a resolution, that that fact was levying of war, and so high treason; but I cannot but observe one thing that my lord chief baron Hale, who can never be spoke of but with the greatest esteem that may be, in the very case mentioned, that he differs with the other judges, and that he was of opinion that that fact was not levying war, and he grounded his opinion upon that which we think was great reason, and that is the statute primo Mariæ 1, cap. 12. It is not printed at large in Keble, but it is in Rastall; and on view of that act, his opinion is well justified, for that act of parliament shews, that all the several facts for which the Apprentices, in king Charles the 2nd's time, were indicted, as reported in Keyling's Reports, all the several circumstances, that are in that case, were not looked upon then to be high-treason. But even in that queen's time, who had just reason to be very apprehensive of tumults and wars, is this statute made, to make the actors in such tumults guilty of felony: and if such tumults did amount to levying war, and was high-treason, it is strange, that the parliament should make so unnecessary a statute as this, primo Mariæ. And before queen Elizabeth's time, no one can give an instance, that a tumult of this nature was looked upon, or adjudged as levying of war. That it was not so before the statute of 13 Eliz. is plain, because that statute seems to be made on purpose to shew it was not a capital offence, and that such tumults had not been adjudged levying war, and so not treason, before that statute of the 13th of queen Elizabeth; and for that very purpose, and to prevent such riots and tumults, was that very statute made: and the provision made by this statute of queen Elizabeth, which was a temporary law, was the reason of the resolution in the earl of Essex's case, and that statute made his insurrection be adjudged levying war and high-treason, and shews that it was necessary to have another act besides the 25 Edw. 3, to make such tumults and riots treason.

The case in Keyling's Reports, of Messenger and the others, supposing it to be law, will not warrant the adjudging this case to be treason, in regard there appears to be many circumstances in those cases in Keyling's Reports, which are not proved in this case now before your lordship. But I must needs say, the prisoner at the bar has had so little care taken of him, that I had no notice of this till 8 o'clock last night, and have not had time to look into the cases, and to be able to discharge my duty to my client as I ought; but I am sure, the gentlemen that appear for the queen have so much candour, that they will not desire any thing in this man's case, but what shall be a precedent in all future cases; therefore I shall state the cases relied upon for the authority of the resolution in Keyling's Reports, as well as I can, upon this short notice. The first case is in 2 Anderson, fol. 5, it was the case of the Apprentices of London and Southwark: they assemble together upon a formed design, concerted and contrived amongst them before, to break open the prisons, to kill the lord mayor, to burn his house, and to seize some arms in houses near the Tower of London. They had a trumpet before them, and a flag displayed with them, and that was adjudged to be levying war, within the 13 Eliz. I must observe, that this was an opinion not given in court, nor upon a special verdict, but given privately, and not otherwise; so that we think the authority in that case will not weigh very much, though all the subsequent cases in Popham's Reports, and Keyling's Reports, are built on the authority of this case, and yet the judges in this case, in Anderson's Reports, rely for that opinion on the statute of 13 Eliz. and that statute was on very great reason made to prevent the ill designs then on foot by the Roman Catholics. There were many Roman Catholics then began openly to shew their aversion to the Reformation in general, and it was then, for the preservation of that good queen and her government, thought necessary to enlarge the 25th of Edw. 3, and also to make the design to levy war high treason during her life only, so that that case in 2 Anderson, was not resolved on the 25th of Edw. 3, but on the 13th of Elizabeth.

There is another case, which was the earl of Essex's, and that was relied on as an authority in Messenger's case in Keyling's Reports; but that differs from this: there was a design of the earl to have assistance from the city, and by force to remove his enemies from the queen, and with armed force to go to the queen's palace, and to her person, and an actual rising and appearing in arms accordingly. This was conspiring the death of the queen, and levying war in the most notorious manner; and this was one of the cases relied on in Messenger's case: but here, in the case now before your lordship, there is no one circumstance resembling the earl of Essex's case. There is one resolution in that case applicable to ours, and that is the resolution of the judges in the earl of Essex's case, that where people by accident came among, and were in company with the earl of Essex and his adherents, and afterwards departed upon proclamation made, they should not be guilty of the treason. In the case before your lordship, it appears, the prisoner came there by accident; and we have shewn by witnesses, he quickly left these disorderly people.

Another case relied on in Keyling's Reports, is, that in Croke Car. the case of the people that beset Lambeth-house; that was a most unjustifiable act, done in despite and in the utmost contempt of the crown and regal dignity,

and with an armed force with drums; and an armed multitude; and the resolution in that case, will be no warrant for the adjudging this case of the prisoner treason, supposing we should not be so happy as to have our witnesses believed, that we were brought in by force; for, in our case, here are no drums, nothing resembling war, but only a tumultuous rabble.

The case of Bradshaw and Burton, in Popham's Reports, 122, is wholly built upon, and absolutely depends on the authority of the case in 2 Anderson; and yet in the case of Bradshaw and Burton, there was a previous agreement, to go from house to house, and to pull down all inclosures. It is true, that the putting this agreement in execution accordingly, is resolved to be high treason. We think, that that agreement and rising according to it, is more than appears in this case of the prisoner at the bar; and besides, it is a resolution in the 39th year of queen Elizabeth, when the statute of the 13 Eliz. was in force, and depends on the authority of the case I have mentioned in 2 Anderson's Reports; and in our case there is no proof that we knew any thing of this tumultuous meeting, but that by accident we fell among them. We hope, that if the jury shall think there is any colour to believe, that we have not answered by our witnesses (whose credit is not questioned) the evidence produced against the prisoner, that this point may be reserved to us; for we apprehend, that it is not settled that this case of Messenger, and the others in Keyling's Reports, is law: but supposing it should be law, yet we hope it will not affect us; for it goes upon a previous agreement, and all there were partakers of it, and willing, and outrageous actors in it, and knew of the design before executed: and there was this circumstance, that when the captain of the guards came to appease them, they asked if it was the duke of York; and when they apprehended it was the duke of York, they called out, That they cared not for the guards, and that they would come and pull down Whitehall: so that, by these declarations, it is plain, the king and his authority were aimed at. But in this case of ours, there is nothing of resisting authority charged on this man, but that he came by accident, and acted only by constraint and force, when unhappily amongst a disorderly multitude: therefore, my lord, on the whole matter, in regard we do, with submission, think, that the law is not settled by the resolutions in Keyling's Reports, but that a review thereof may be admitted, and in regard we think our case is far different, and a much better than any of the former cases, which have been looked upon or esteemed as levying war, we hope, that in case the jury should think we are guilty of any criminal act, that whether such acts be levying of war, or no, shall receive a further, and more deliberate determination. I shall therefore take up no more of your lordship's time.

Mr. *Darnell.* My lord, the first time I heard from the prisoner relating to this cause, was last night late; and must own my opinion to be, that a longer time is necessary to encounter the authority of the Report of my lord Keyling. But, my lord, without disputing the authority of that book, we must say, this case comes far short of that resolution; for there was a plain hostility, a captain with a sword drawn, colours, two meetings to consult, and a resolution taken, a resisting and wounding the constable, and striking the officer of the guards, and their intention to pull down bawdy houses, which might be any house they thought fit to call so. As for the case of Oxfordshire, it is plain there was an arming themselves, they had put on armour to act offensively, as well as defensively; they proposed to come to London, and to have others join with them, and that case was adjudged high treason. For the general intention to pull down inclosures: where there is any resolution, that these great tumults amount to high treason; it is on this foundation, that the design is general, and is an exercising of a regal authority, which nobody but her majesty ought to make use of. It is said in Messenger's case, that the intent must be such, and that such intent must appear by such proof as will satisfy the jury. Now, how do they offer to prove the intent of this man? If there is any thing to prove it, it is subsequent to the pulling down the first meeting-house, for it is plain he was not there till the design was so far executed, and the fire had been made an hour before he came: now, if he comes there, and hallooes and rejoices at it, that cannot make him guilty. I agree, that if any number of persons are going to commit high treason, and a man meets them, and joins with them in the execution of that fact, he is guilty; but if he be ignorant of their design, and hallooes and rejoices with the crowd, that will not make him guilty: and in this case, it appears, that every body that passed by the crowd that night were constrained so to do; but where such person who is got into such a tumultuous assembly, doth get off as fast as he can, this cannot be high treason, or any crime whatsoever. If the prisoner had gone to Drury-lane, and they had shewn that he did any thing there, we should have had a harder case than we hope we have; but we think there is no proof of the intention of this man to commit those facts of pulling down the meeting-houses in general, and of assisting in the execution of that intention. My lord, if our witnesses (whose credit stands unimpeached) be believed, it is impossible that he could be concerned in this design, or the execution of it, or know any thing of it, till it was executed; for it does not appear, that on any of the days, when the mob were together, that he was among them, or that he acted any thing till after the meeting-house was pulled down, and the fire made. We have shewn where he was all that day, and that it was near eleven when he came to the fire. I think we have shewn by the waterman that carried him home, that there was not room for him to bear any share

in this outrage; for between the time of his coming to the fire, and going home by water, there is no room for him to do any thing more, than to go between those places. There is no proof that he did any thing but what the mob in a manner forced him to do; and perhaps it might have cost him his life in so tumultuous an assembly, or, at least, some bodily harm, if he had done less.

Att. Gen. My lord, I beg leave to say a few words in answer to what has been insisted on by the prisoner. They have insisted on these three things; First, that notwithstanding our witnesses have given that account which you have heard, yet they are mistaken in the fact, for he was not the man that they say was there bringing the brass candlestick; that it was another man, a little man in his own hair, and not like the prisoner, and therefore he is not guilty of the fact charged on him. In the next place, they tell you, that admitting he was there, and that our witnesses have told you truth, yet he was there unvoluntarily, and what he has done was under a force, and therefore he cannot be looked upon to be guilty of the treason, because, intentionally, he did not go along with them in that design. The third is, that admitting you should believe all that the witnesses say, that he was there, that he did know of this design, and acted in it, in concert with the rest, yet this charge does not amount to high-treason, and therefore he ought to be acquitted.

Now, though this is the last thing mentioned, yet it is of the most consequence, and ought to be taken notice of first; because if he is guilty of the fact, yet if it does not amount to treason, he must be acquitted. They tell you it is a notorious riot, such a tumult as is not to be endured; that a punishment ought to be inflicted on those people that were concerned in it: But they insist on it, that this is not high-treason, as charged in the indictment. Now I think it is a plain proposition laid down, that whenever there is force used against the government; whenever there is a general intention to work a reformation; whenever there is an oppression complained of, and the people use force in order to remedy it, and there is an assembly of a multitude for that purpose, it is levying war; for it is an opposition to the government, and the civil magistrate.

My lord Coke in his comment on the statute of treason, takes notice of this, and says, that if they go about by force to reform any thing they complain of, it is levying war; because they take upon them royal authority, which is against the king. The case they mention of Bradshaw, where a great number assembled, in order to settle the rate of wages, they thought there was not enough given them for their labour: They did appear in public in order to redress that grievance; and that appearance in public was looked upon to be high-treason.

It is not proper here, to enter into all the cases that may be cited; the last book they take notice of is my lord chief justice Keyling's, which was printed with the approbation of all the judges of the Queen's-bench; and every body knows that he was as great a judge, particularly in the crown-law, as any that went before him. And it is the opinion of all the judges, excepting one, that that case is treason; and you see on what his opinion was founded, that it was not high-treason, because there is a particular act of parliament which says, that in case proclamation shall be made for them to depart, those persons that do not depart on that proclamation shall be guilty of felony. That act relates only to the meeting and assembly on a private, particular account; for if a lord enclose a waste, and the tenants rise in opposition to that act, in order to redress that inconvenience, nobody will pretend to say, it extends to high-treason; because it is a private inconvenience that goes no farther than that manor. But at the same time that they made use of this distinction, it is taken notice of, that if there be a public law, that is looked on to be the grievance, and they came to redress the grievance arising from that law, that is opposing the public, and is high-treason.

Now, to compare these cases: There was a design on Tuesday night declared among the mob, that on the next day they would destroy all the meeting-houses thereabouts: Sure none will say (let their opinions be what they will), that destroying a meeting-house is more service to the public, than destroying a bawdy-house? And yet their meeting to pull down the bawdy-houses was adjudged to be treason. And shall they be hanged for pulling down bawdy-houses, and have nothing but a fine for pulling down meeting-houses? Every body knows they are allowed by law. The act of parliament that gives indulgence to the Dissenters allows them to meet in those places: It were to be wished, that there were no such persons that did dissent from the Church; but these places being allowed by law, it is lawful for them to meet there. Now for people to find fault with this law, and to say, we will redress this inconvenience: though the public will not throw these people into gaols for meeting there, we will pull down their houses about their ears; this is an insolence not to be suffered. This is assuming an authority that does not lie in the people; every body that lives under a government has courts of justice to apply to, and when any thing is acted contrary to law, the courts of justice are open; and I may defy any one to shew that there has been a denial of justice upon due application.

Now for people to meet together to do right to themselves, and to be judges and executioners at the same time, is never to be borne, but deserves the most severe prosecution; and it is a sense of this that brings this cause here. For, as to the man, I never saw him before; nobody bears him any ill will; but it is known that there have been these riots and rebellions committed; and it is agreed that he was among them. This brings me to take notice whether

our witnesses are mistaken in saying he was there: They knew the man; they spoke with him; and they are positive to him; and they give a particular account of what he and they said, and what they saw him do; and now they say, our witnesses are mistaken. As to the hours, little is to be depended on, because people are so uncertain in their computations: It is plain they were all suppressed by twelve o'clock, so that he might stay as long as any, and yet be in bed by twelve o'clock, for by that time the guards came and suppressed them. They give an account of him till ten o'clock; I find there was no business that detained him till that time; he had nothing to do in the alehouse; he was got drunk, and he staid in this disorderly place till the time was proper for him to come out, and transact this matter. For it was about ten that one of our witnesses saw him at the meeting-house, and at the fire, and he went along with him towards Drury-lane, and there he left him: And this agrees with what his own two witnesses say; they say, they saw him by the duke of Newcastle's corner, coming from Queen's-street, and going towards the fire: It was after this, that he had hallooed them away to Drury-lane, and was again returning; it is plain by the evidence of both sides, that he was there. All that they insist on, is, that he was forced into the crowd: but how agreeable is that to the story of the witnesses that saw him bring the sconce, and carry it in procession round the fire, and throw it in?

He calls Wood, who tells you he was his friend; that he had been with him all day. He tells you, that they received news that there was a fire in the Strand; that the prisoner was concerned for a gentlewoman that lived there, and that they went away immediately to assist her. Wood says, he went with him as far as Temple-bar, and there the crowd was so great, that they were forced by the torrent of people up Sheer-lane, and through Lincoln's-inn-square, and they could not get away till they were crowded through the little gate, and there they took hold of and forced him to do all that he did: We must leave that to your consideration; but we think it very extraordinary. But the other witnesses do contradict it: Ward and Giles say, that he stood and talked with her, and she told him first of this riot, and that he was then alone and nobody with him. I will not repeat the particular circumstances that have been proved; that he was there they have proved; and we have proved, that there was a general design of pulling down these meeting-houses. We cannot prove the design of any man but by his actions. If a man meet with people that have before laid a design, and he acts with them, the law says, the intention of every man there is to do what was the design of that meeting. The design was to pull down these houses, and they did execute it; and it being done by force, we think it does maintain the indictment, and that he is guilty of the fact charged on him, and we submit it to your lordship and the jury.

Sol. Gen. My lord, there are two points to be considered in this case: First, whether this tumult be a levying war, and high-treason? And in the next place, how far the prisoner may be concerned in it, whether what he has done, has made him equally guilty with the others, supposing the general design and the execution of it to be high-treason?

We take it that this design, to pull down these meeting-houses, was a general design; and being a general design, and done upon pretence of reformation, and in defiance of the law, that this is high treason, and levying war; and facts of this kind in all ages have been adjudged so. The general design is proved by what followed, by the action, by pulling them down; for we have proved that four were pulled down, and that there was an intention, or declaration that they would pull down meeting-houses. What is this design against? It is against the queen: It is levying war within the realm, which I take to be a material word in the 25th of Edw. 3. It is levying war against her sovereignty, her power and authority, in matters which she, either as concerned in the legislature, or in the executive power of the government, may reform and correct. The taking arms in defiance of any law, or to correct any abuse, or to deprive the subject of the benefit of any particular act of parliament, is levying war and high treason, and so adjudged by the statute of queen Elizabeth. The case of the was long before that time; the case of inclosures was a private interest, yet the getting a number of people together, in order to throw down all inclosures, is adjudged to be high-treason; and that resolution has always been affirmed. That is the interest of private persons, and therefore will shew, that what they insist on of the other side against the queen, is of no consequence; for if it was levied against her authority, with submission that is high-treason: the taking up arms against it, though there was no immediate intention against her person, or to destroy her. Indeed it has been common to lay a design to compass and imagine the death of the queen, and the overt-act of the treason has been the proof of that design; there the compassing is the treason, and the overt-act is only the proof, and therefore a design must be laid in that case. But in cases of this nature, the levying war is the treason, and therefore the proving the levying war is sufficient, without laying any design to compass or imagine her death. Now that this is against the queen, and her sovereignty, is most plain, because it is certain these meeting-houses are tolerated by law: The Dissenters are indulged in the exercise of the worship of God in their own way, by the act of parliament: That act of parliament can be taken away by nothing but an equal power: in which the queen must give her assent, and it must have her concurrence. The queen has the administration of justice under her care, therefore taking up arms to destroy meeting-houses in this manner, is levying war against

the queen, and levying war within the realm; to invade that right which by the laws of the kingdom these people are intitled to: For the law has given this right. Now to take up arms to violate that right is high-treason, and is a stronger case than any that have been mentioned and agreed to be law. The case of an inclosure is a private interest; the taking arms to enlarge a highway is so; to destroy bawdy-houses is so; to take up arms to remove a public nuisance, which ought to be the particular care of the government, that is levying war.

They have insisted upon the statute of the 13th of Elizabeth, which they use as an argument to shew that this was not treason within the statute of Edward the third; but that act was to make a conspiracy to levy war high treason. But then how stood the case of the inclosures at that time? Several people conspired to throw down inclosures, and that was adjudged high treason, because it was a conspiracy to levy war; and how could that be high treason, if taking arms to throw down inclosures were not so? We take it, that the case in Anderson is full in point, and these cases are affirmed by the judges in the case of Messenger: so that it is the greatest authority, and never to be shaken. They say the case in Anderson is a private opinion; it is the opinion of the two chief justices, and the master of the Rolls; the others are the opinion of all the judges: so that it is such an authority as never can be shaken.

This shews the foundation that there is for this necessary prosecution, that people may see that it is not in the power of every man, according to his own fancy, to find fault with the government, and alter the laws, and deprive the subject of any benefit he is entitled to by law, it is an invasion of the royal authority; they may by the same reason fall upon a man's person, as they may pull down his house; and things of this nature must run into endless confusion, and none can be safe, unless people that are thus guilty be brought to punishment.

These authorities then being so strong, we hope, that, as the case stands, on the evidence for the queen, that the prisoner has been proved guilty of the charge in the indictment: for that there was a general design, appears by what was done in the execution of it. The only question is, whether this man was privy to any precedent design? And for this, I rely on the lord Essex's case, in Moor's Reports, which was settled by all the judges in England. I say, that it is not necessary to prove any such previous intention, any more than if a man should be so bold as to murder a judge on the bench, must you prove that there was any design? Does not the blow that was given shew the design? And is it not high treason in case of counterfeiting the coin? Must you prove an intention? No, the treason is in the fact, and not in the intention: Where it is in the intention, as compassing the death of the queen, there must be an intention proved; but where it is in fact, where the fact is treason, no previous design is necessary to be proved, in any case whatsoever: the fact itself is the treason, and speaks the design; and the man that commits treason, must do it with a treasonable intention. And in the lord Essex's case, it was adjudged, that my lord Southampton, who joined with him in that fact, which was adjudged levying war, was guilty of the same treason, though he did not know of the design of the lord Essex, but thought he meant only to remove some particular enemies of his from the queen.

They say, if he was there, he was only there by force: as to his coming there, I think it is as fully proved as can be; but say they, it was not he that threw the sconce into the fire, for he was at another place at that time, for that was thrown in at nine or ten o'clock, and he was then elsewhere. I wonder this should be insisted upon, it being only a small variance in time: and as he was observed to do the fact, it is not material as to the hour: therefore, unless what the women say is an answer to that evidence, it still remains unanswered; and as to what they say, we must submit it, whether it can be believed, whether they deserve that credit; whether a man that stood by, and saw every thing that passed, and followed him up the street, to the fields; whether they can deserve that credit that this man does; for what they saw was only at the fire. They agree a waterman did it, but it was a short man in black hair, and they saw him only by looking under some people's arms; they could not discern so particularly as this man, that saw him come out of the house, and followed him: but whether he was concerned in that act or no, is not material. His going from the fields, and hallooing the people to Drury-lane, is a matter they have not answered, they have given no evidence to answer that; and if that were so, it is a sufficient evidence of his levying war; that is enough, his saying, he would lead them, and encouraging them to go with him; that, no doubt, will be a full evidence, joined with his being at the fire, which is proved by five or six witnesses; and this is contradicted by nothing, but saying, he did it by force, and if that were fact, then certainly he would not be guilty: but on what does this depend? On two witnesses; on Wood, whom, I think, nobody can believe, for he contradicts himself, in coming to the place, and going from it again; and how defective he was in every point, I doubt not your lordship and the jury have observed. But when they call their other witness, they make it clear: for if any credit is to be given to their other witness, Wood is not to be believed, for he says, the prisoner left the ale-house to serve a friend in the Strand, and that he went along with him; but this is contradicted by the other witnesses, and it appears that he was not with him in Fleet-street. Cummins says, the prisoner was drunk, and thrust about by the mob, from one to another; but he does not prove he was under any force,

if he had, they would have treated him otherwise, but they are continually justling, and playing with one another; and though other people were threatened, that does not prove that he was. They say he was drunk, that is no excuse at all. I was willing the jury should have all the circumstances before them, and therefore joined in asking that question; but it cannot be material, nor is he more or less guilty, whether he was drunk, or sober; so that we take it, there is no evidence that he was under any such force, as put him under a necessity, for his own preservation, to join with the people in this tumult. If he was not under an absolute necessity, he cannot be excused; so that it is plain, they have not answered that matter at all. And as to the two women, that never saw him before, but met him coming back to the fire; and as to the proof, that he was at home at twelve o'clock, that is no ways inconsistent with our evidence. The matter of reputation is no ways to be considered in this case: I would not say any thing more, but you hear what was the noise of the mob; and that cry and hurry that was made on this occasion, was in defiance of the justice of the nation, which was then carrying on in the most solemn manner. But we submit it to your lordship, that this fact, this design, executed in this manner, is plainly levying war, and high treason; and the prisoner at the bar, by the evidence that has been offered, is guilty of the fact charged against him in the indictment.

Mr. *Thompson.* My lord, I would beg leave to add a very few words. As to what the gentlemen for the prisoner insist on, in point of law, that this does not amount to levying war, it has been spoke to so fully, that I will not waste your lordship's time unnecessarily; The rule of law is very plain, that wherever any number of persons shall assemble together of their own heads, without warrant, pretending a reformation of what they think an abuse, this is an invading the regal authority; and if that design is executed, it is levying war, and high-treason, in all, as well those that conspired, and were not at the execution, as those that were aiding in the execution, and were not in the conspiracy: As to what is mentioned of pulling down inclosures, if it be a particular inclosure, it is true, it is only a riot; but wherever there is an intent expressed, to pull down one, and then another, and so on, that is levying war, and high-treason. And here you have had a proof of an intent to pull down meeting-houses, and an actual execution of that design in several: Whether this man knew it or no, is not material; if he is aiding in the execution of that treason which was designed by others, he, under favour, must be guilty of treason too. And so is the case of my lord Essex, which has been mentioned; and so says my lord Coke, in the 3d report; and my lord Hale himself, in his Pleas of the Crown; And this case goes farther than that in my lord Keyling, of the bawdy-houses, for they were abuses removable by law; but these meeting-houses are so far tolerated by law, that it is not in the power (I may take leave to say) even of the crown, to commission any to suppress them. The question, my lord, as to the fact, is, Whether he has been proved to be aiding and assisting in the execution of this design? The evidence for the queen has sworn as to several circumstances; his going to the meeting-house; bringing out the sconce; carrying it to the fire; throwing it in; and going from thence to Drury lane, to pull down another meeting house, at the head of the mob, leading them on, and encouraging them to follow him; that they did follow him, and did pull down that meeting-house. What do they say, my lord, in answer? They produce a great many witnesses, some that are inconsistent with the others, and some that do not deserve much credit. They say, we are out in point of time; that he was at the alehouse until half an hour after ten, so could not throw the sconce in the fire, as the witness swore. I must observe, that the witness was positive as to the man that he saw, and the fact: but as to the time, though he at first declared it about nine or ten, yet, when pressed as to the certainty, he answered, he could not be positive as to the time. Then they say, that the prisoner was driven to the fire, and that Wood, the witness, was with him, and saw him forced by the mob. Mrs. Giles, another of their witnesses, says, that Wood was not with him when he was going to the fire. Then, as to the innocence of his intentions, it is said, the prisoner left the ale-house, to help gentlewoman in the Strand, upon the news of the fire; but the postillion that brought the news, came to him soon after eight, and the prisoner did not go then, but staid until after ten, so that is only a pretence of excuse, but no real one. Then they say, what he did at the fire was not as a free agent, but by compulsion: As to that, we have proved that he did not only halloo, and throw up his hat and wig, and huzza, and make processions before the fire, but that he made a soldier pull off his hat, and huzza, and do as he did, which seems to be something different from compulsion.

My lord, the other facts, besides the sconce, have been proved by so many witnesses, that it is not very material, whether that be true or not; but even, as to that, the circumstance of time is so very trivial, since the witnesses would not be positive to that, there is little room for doubt of it. However, as to the rest, it is very plainly and fully proved, and we submit it to your lordship and the jury.

L. C. J. Gentlemen of the Jury; Daniel Dammaree, the prisoner at the bar, stands indicted for high treason; for that he, on the first of March last, in the parish of St. Clement Danes, did, with a great multitude of persons, to the number of five hundred, armed with swords and clubs, raise and levy public war against the queen.

There are two things insisted on to bring this matter to two points by the counsel of both sides: One is as to the fact, which will be proper for your consideration, to consider the particular circumstances: And the other, as to the law; how far it will amount to high treason, and that is what it is the duty of me, and the other judges here, to direct you in. I shall first state the fact as it stands on the evidence, and then point out, as well as I can, where it will rest for your consideration; and if I mistake, I am so well assisted, that I am sure it will be set right. As to the fact; the first witness produced is Tolboy, who does not speak any thing to charge the prisoner particularly, but gives an account, that upon the Tuesday, the day before this matter for which the prisoner is indicted, he passing through the Temple, saw a great number of persons that had conducted Dr. Sacheverell to his lodgings; there he heard a discourse of pulling down the meeting-houses: Dr. Burgess's was named; and some were proposing to have it deferred until after the trial; but others would have it the next day. What the result of that discourse was, he does not know, for he made no stay; he passed through them, and left them discoursing.

The next witness was Orrel: He gives a particular account of the prisoner, and the meeting-houses he had any concern in the pulling down. He says (after he had observed something of a great mob gathered together, a night or two before), that he was at a coffee-house, where word was brought, that they were pulling down Dr. Burgess's meeting-house; he went to see what they were doing; he was in the meeting-house three or four times, and went to and fro. He takes notice that there was a little man in the pulpit, pulling that down, and that appears to be pretty early: That about 10 o'clock he had notice of their pulling down another meeting-house: That he went to Fetter-lane, and there was the constable insulted to such a degree, that he was forced to go off: That meeting house was pulled down, and burnt in Holborn; the materials of Mr. Burgess's were carried into Lincoln's-inn-fields, and burnt there: That thence he went round, and came into Lincoln's-inn-fields again, and found them very busy about that fire. He tells you what questions were there asked, and what imputations were used one to another: One asked, where is the lord Wharton's? And others, where is the Bank? and the cry was, To the city, to the Bank, and damn them, we will have all the meeting-houses down; and afterwards Dammaree was one of them that used that expression himself: That then he took notice, that from the middle of the fields there divided a small body, and he took notice of a pretty tall man leading them on: I was then, says he, too far off to distinguish him; but he says, he kept his eye on him, and coming nearer he found it was Dammaree: That he called on them to go to Drury-lane; and that some proposing to go to Wild-street, some of the company said, That was but a bird's-nest, that in Drury-lane was worth a great many of it; Dammaree all the time encouraging, and damning them to come on, and the cry was, High-Church and Sacheverell. Being thus attended, part of them went towards the arch; the other party, which Dammaree led, went towards Great Queen-street: That he saw them go into Great Queen-street, and then he saw no more of Dammaree. He says, that he went into Drury-lane, and there they had pulled down another meeting-house, and were burning it; that the guards coming thither, he met them, and told them, the great body was in Drury-lane: That when he came there, the guards were resisted by them. One person he mentions particularly, but it was not thought material to go into that; he drew his sword, and said, Damn them, he did not care for the guards, nor the parliament neither; that there were swords drawn, the officers and soldiers were attacked, and that they said, they would fight the best of them. Dammaree does not appear to be there, for these are the persons that he had led on, but what was become of him does not appear but by his own witnesses. On this, Mr. Orrel went away; for there was a rumour, that a body was gone to the Bank, therefore he thought to lead the guards thither, that being of greatest consequence to the public; and those persons that had it in their heads to go thither, knew they should have given a great blow to the credit of the nation, if they could do any thing there: That he found, instead of that, they were gone to Black Friers; That he called on the captain of the guards, and shewed him the way to the meeting-house there. This is the account he gives of the matter.

The next is Collier: he says he saw Dammaree in Lincoln's-inn-fields, at the fire, bring the branch from the meeting-house: that he carried it three times round the fire, in a sort of procession, huzzaing, and then threw it in. He gives an account of something else that was brought there, and carried likewise about in procession. The first witness observes, that he threw up his hat and his wig both, that you may not mistake him for the man in his own black hair; and another being asked, what he had in his hand? said, He had nothing but his wig; and you will consider, whether the hair he had on then, was not the short hair that the other witnesses speak of.

The next witness says, that he saw him at the fire first about nine: that he believes he was there two or three hours; and that he called upon them to go away to Drury-lane, and that he went with them that way. As to the meeting-house in Drury-lane, none say that they saw him there.

Still says, that he saw Dammaree in the alley about eleven, and says, there was then a fire in the fields; and he only says, that Dammaree hallooed among the rest: but it may be material, by and bye, to consider his being in the alley about eleven; for when you consider

the evidence of the women, of bringing the branch to the fire, and that the fire was dead burnt when they went away; you will then call to mind, that the bringing the branch was one of the last things.

Mitchell says little more, than that he saw him hallooing, and throwing up his hat; and that it was about eleven o'clock. This therefore only confirms that he was there, and that he was in the alley.

The next was Morgan: he says, that hearing of a great tumult at the meeting-house, he went thither, and found them at work, and a fire was made before he came: that Dammaree was there, in his waterman's coat, which is a circumstance all the rest do agree in: that he encouraged the mob very much: that he walked round the fire with the bedstead that was thrown in, and some other things were thrown in afterwards. This man asked them, what they were doing? The guards are coming, and they said, Damn the guards, and the parliament too, we are ready to face them all. When they enquired where that man was that spoke of the guards (for he was a discourager of the business) thereupon he got off, and went away. He says, he saw the doors of the meeting-house thrown in, after they had been carried in procession; and that it might be half an hour after ten, or more.

The next is Eaton: he says, he saw him at the fire, and saw several things brought to the fire, but did not see him bring any thing; but Dammaree appeared as one of the principal: and that Dammaree, and some others, compelled a soldier to pull off his hat, and that Dammaree spoke to him particularly; and the time he speaks of is about half an hour after ten.

This is the stress of the evidence for the queen, by which, supposing that there was nothing said to oppose it, it is fully made out, that he was engaged with those other persons that did pull down Mr. Burgess's meeting-house, and assist in carrying the things to the fire in Lincoln's-inn-fields, and burning them: that he led them away to Drury-lane, and that he and others said, they would have all the meeting-houses down. There was an opposition given to the guards, and you will find that the like was done in other places.

Now you are on the other hand to consider what defence is made for the prisoner, and by that, to weigh what credit you will give to this testimony on the behalf of the queen. They attempt to give an account where he was all that day, and by that they would shew, that the witnesses produced for the queen must be mistaken; because it is impossible he should be there at the time they say he was, for they undertake to shew from ten in the morning until eleven at night, where he was. And another thing they insist on is, that what he did was by force and violence; though they do not deny he was there, yet say they, he did nothing more than the queen's witnesses did: they pulled off their hats, and made the same outcries for their own safety. They say likewise, that the man was in drink; and I know not what use they would make of that, whether by way of excuse of his crime, or whether it is to shew that he could not do what he is alleged to have done. They call Allen and Pink to shew where he was in the morning; they only shew how early they began to drink: and as Wood says, he continued it till after ten at night.

The next is Wood, and he is material, if you can give credit to what he says: he says, he was at the Bell in Water-lane till a quarter after ten; that there came in news that there was a fire in the Strand, and that was the reason of Dammaree's going out; that he started up, and said there was a gentlewoman in the Strand that was an acquaintance of his, and he would go and help her; that thereupon he and Wood went out to assist this gentlewoman. It fell out, that as they were going through Temple-bar, there was so great a multitude that came out of the Strand, that they stopt them, and they were carried along with the stream up Sheer-lane through Lincoln's-inn, through the wicket, and there the mob seized him, and would have him along with them. I am sorry, I must needs say, that we are forced sometimes to see such men brought into a court of justice; I would not take notice of it, were it not flagrant and visible to every body's view. In the first place, it is inconsistent with itself, that he should be going along Fleet-street by the Temple at ten, or between ten and eleven, and that there should be so great a crowd, when the fire had been three hours before, as they would have it. From what place could this mob come? There is no account of any assembly of a mob that had been that way; but if they were stopt from going along, how could they get across the street? For it was more easy to go along by the walls, than to cross the street; and how could he get into that stream? He must force himself into it first; and how could that great crowd get into Sheer-lane? Then in Lincoln's-inn you are got into a large place, and in that large square, unless a man would lay hold on him, it is impossible to drive him through that narrow passage at the wicket. Then what became of him after, he cannot give any account: sometimes he went by the dead wall, sometimes by Sheer-lane, and sometimes by Chancery-lane. Then he is asked where they seized Dammaree? He says against the dead wall: I believe every body knows there is no dead wall until you come to Lincoln's-inn-fields, and that he who turned on the left-hand from the mob could not see them seize him there. But all that he says is overthrown by the other witnesses, for they contradict him as to his going to assist this gentlewoman; no, he staid an hour after the news: nay, that you may have an instance of the uncertainty of the computation of time, that witness, which the Bishop, says, the news was brought him

half an hour past eight, and that he staid until half an hour past ten; and then being asked, how long after the news was brought he went away, he says, about an hour: and this is an instance that people are not exact in giving an hour on such occasions.

Fecard came next: he says only that he was in drink. But that part of Wood's evidence, whereby he would have you believe that he went in kindness to help the gentlewoman, is contradicted by Bishop; for he said they had a supper after the news of the fire; and the postillion says, that he staid an hour at least.

Ward and Giles give this account: that he was at Giles's shop in Fleet-street about half an hour after ten, which is about the time that he went away from the Bell: that he staid there till three quarters of an hour after; but they both contradict Wood, for he says he went with Dammaree; but they say, he was not with him. She gives this account: that they heard there was a fire in Lincoln's-inn-fields long before this; that they heard of it about 8 o'clock, and that about that time they saw two men with irons, which they said were the irons of the pulpit; and he says, that he knew them; which does prove that the business. She was asked, how she knew him to be the same man? and I think she gives a good account of it. She takes notice of one thing that some asked him, who he was for? He did not make answer that he was for High Church or Sacheverell, or any thing of that; but gave a civil answer: You see who I am for, I am for the queen.

Cummins says, that he saw a waterman in the queen's coat, and that he saw him receive a blow on his head for not taking off his hat; and that he saw him pushed to and again; and that he seemed to be very drunk; and this he mentions to be about eleven o'clock.

The next are Reading and Prince; they came together, and went together: they say, they saw the sconce brought by a short man in his own black hair, and that this man had on a waterman's coat with a badge, but they could not distinguish it; they could not distinguish the colour of the coat, but his hair was black, and he a little man; and though they were not near him, yet they were near Dammaree soon after. About three quarters of an hour after, going homewards, they went towards Queen-street, and there they met Dammaree (that was about eleven) coming from Queen-street, and going to the fire. It seems they had some talk with him, and he kissed one of them, and they are sure that this is the man, and there they find him at eleven. Cummins saw him at the fire at eleven, and he was with Mrs. Giles three quarters of an hour after ten. These women say, when they observed this short man, they were without the mob: when they came to the fire, there was a great mob about it; and as you have heard from others of the witnesses, that there were some thousands, you may imagine them some hundreds. They were behind the mob, and he a short man: and they were asked how they could see or observe him? They say, they discovered him as they looked under the arms of some of the people. You will have some regard to this evidence by-and-bye.

The next is Walker, who is a waterman, and says, he took up Dammaree at half an hour after eleven, for he took notice of the clock; and there is reason to think, that while he was waiting in his boat, he might observe the clock: he therefore, I believe, may be relied on. He says, he carried him cross the water, and set him down at, or near home; and therefore you may believe he did no more.

Hales says, that she met him at the Strand-bridge near eleven; there could not be much difference in that time. Harbins says, she met him with Hales, and it was about eleven.

This is the evidence as to the facts: they have called others to give an account of his reputation; and as of the one side his reputation is not attempted to be shaken before this time, so they have brought witnesses to prove him a firm man to the Church and Queen, and a peaceable man. He took notice of the proceedings of Dr. Sacheverell, and as one of the witnesses says, he wished that Sermon had not been printed, and then we had not had this bustle; and that shews, in that instance, an inclination not to be engaged in such a mob as this. They shew other instances of his pressing seamen for the queen; and this is the strength of the evidence on the other side.

As to the use they would make of the difference in point of time, I would observe, that it is difficult to set that right among his own witnesses; and it is almost impossible to be exact to half an hour. For Giles says, that he came to her shop at a quarter after ten, and the other witnesses say, he did not leave the alehouse till half an hour after ten: but this is no objection. It is not to be expected that people should be so exact upon such an occasion; therefore how does this oppose the evidence of the other side? If they had not brought some witnesses themselves to prove he was there, they might as well have used it as an argument to prove he was not there at all. For they have given an account of him till eleven; but you must consider what credit is to be given to some of their own witnesses, that prove he was there; and then you must consider what weight is to be laid on the variance of time, when all lies in the compass of about two hours. You observe too, that they give no account where he had been when he came from towards Queen-street; for if it be true that he was ill used for not pulling off his hat, how comes he to be coming back again to the same fire? Therefore consider how far they are to be reconciled; for if there is a way to reconcile them all, that will be an inducement to you to believe they all speak right.

Collier says, he saw him bring the branch, that it was pretty near the time of his going away to Drury-lane, and it was not long before the time that the women went away, and met

him coming back again: so that though it was begun to be rifled at eight o'clock, yet by the evidence of the women, it appears that the branch was thrown in between ten and eleven; and that is consistent with the time that he left Mrs. Giles. Then if that be so, what is there that contradicts it? Nothing but a computation in time, and an easy supposition sets that right. If they mistook but half an hour, or an hour, it sets all right; and it is easy in such a hurry to mistake it.*

Orrel says, that Dammaree led the mob towards Drury-lane through Great Queen-street; then, when he had done his work there, and the guards had dispersed them, he comes back again, and the consequence is, that those two women should meet him. This falls in with what the witnesses say, that he led them towards Queen-street about eleven, and they say, they met him coming from that way back again, about eleven; and they do not pretend to give any account of him that way, though it might have been as easy for him to do it, as to give an account of himself in Lincoln's-inn-fields. And if this man was only forced to throw up his hat and huzza, and get from them as soon as he could, his nearest way to Strand-bridge was not by Great Queen-street; and then how comes he to come back again? But if he set them on in Drury-lane, it was then very proper for him to come back and visit his friends that he had left in Lincoln's-inn-fields, and see how the work he left them to do went on. Then the time that the waterman carried him over is right; that after all was done, he should go home; but it does not appear which way he went, and he might do all these things charged, and yet go home at that time.

As to his defence that he was forced, there is only Wood and the man that went to see his apprentice. Cummins only saw him receive a blow for not pulling off his hat; and says, he was shoved about by the mob: but it is plain, he was one of them that forced the soldier to huzza and pull off his hat, and there is nothing to contradict that. They take notice of his being in drink; it is reasonable to think it was so, but that is not to be any excuse at all: I believe a great many of those people might be in drink, and that is a fit preparation for such enterprises as these; when men are going to act so contrary to law, they ought to prepare themselves for it by drink, and a little more might carry them to any other houses; nay, might carry them to St. James's. If a man be guilty of a crime of so great consequence, it is no excuse that he is in drink: it is a crime that he is in drink; but he was not so far disordered, but he knew what he was about: he could lead them to Drury-lane, tell them that he would have all the meeting-houses down, and use proper words to encourage them: therefore that drink, that does not disable him from doing mischief, must not be an excuse for doing it.*

As to his reputation, I ought to take notice to you what I think is the nature of that sort of evidence, and the proper weight that is to be given to it. When a man is accused of any crime that is wicked or dishonest, and it is not fully proved upon him, but it is in doubt; then his reputation is of great moment, because it is not to be thought that a man of a good reputation would be guilty of such a crime as carries slander with it. But you will consider, in the first place, that that is not to prevail against positive evidence, if you believe the witnesses; if so, a man must always escape the first crime he is guilty of. But there is another unfortunate circumstance I must observe, that we are in a time when many people were led into a belief, that doing these actions was a commendable thing; that it was a shewing their zeal to the queen and the church; and I doubt not, but many of them that were concerned in this matter were poor mistaken men that thought they were doing their duty, and what did well become them. And if that be the case, then his reputation and good behaviour before is of no consideration.

* In Purchase's Case, the Chief Justice seems to lay rather more stress upon such a variance.

* See vol. 7, p. 150. Leach's Hawk. Pl. Cr. book 1, ch. 1, s. 6. Paley (Principles of Moral and Political Philosophy, b. 4, chap. 2,) has some casuistical learning on the guilt of drunkenness, in so far as it subjects the drunkard to the hazard of committing crimes, which is a state of sobriety he would not commit.

Fielding (Tom Jones, book 5, chap. 9,) thus comments on a representation of Æschines, that drunkenness exhibits the character of the mind, as a mirror exhibits the features of the countenance:

"Nothing is more erroneous than the common observation, that men, who are ill-natured and quarrelsome when they are drunk, are very worthy persons when they are sober: for drink, in reality, doth not reverse nature, or create passions in men, which did not exist in them before. It takes away the guard of reason, and consequently forces us to produce those symptoms, which many, when sober, have art enough to conceal. It heightens and inflames our passions, (generally indeed that passion which is uppermost in our mind,) so that the angry temper, the amorous, the generous, the good-humoured, the avaricious, and all other dispositions of men, are in their cups heightened and exposed."

This Case of Dammaree was referred to in the Trial (March, 1737, before the Court of Justiciary in Scotland,) of William Maclauchlan, for being one of the Porteous mob (Mac-Laurin, 633,) wherein the excuse of drunkenness was alleged, and authorities from the civil law cited as to the point.

See also Barrington's Observations on Statutes made 2do vulgo primo Jacobi: Blackst. Comm. book 4, chap. 2, s. 3.

It is unhappy, indeed, that these mistakes are propagated; but it is monstrous to see how people may be misled; that they should fall foul on the Dissenters, and pull down the meeting-houses, when they are rather the objects of pity than anger. If they are not satisfied with the established Church, which is the best in the world, and they lose the benefit and advantage of that excellent constitution, they are to be pitied for their mistake: but why should any one be angry, because they do a prejudice to themselves? But this matter having been under the consideration of the legislature, and there being a law that allows them the liberty of serving God in their own way; since that liberty is allowed them, why should any body be concerned that they enjoy it? And why should their meeting-houses be pulled down? But Dr. Sacheverell at that time (I would not reflect on him; he has undergone a censure in another place) when he had fallen foul on the Toleration, and represented it as an encouragement to schism, and a ground of danger to the Church, those people that thought him a confessor for the Church, thought they could do no less than pull down those meeting-houses, which were the seminaries of schism. And this doctrine of Non-Resistance, which is cried up in all cases to be the doctrine of the Church, this doctrine is to be propagated by Resistance; these people will resist, to shew they are not for resisting, and oppose the queen's guards in vindication of that doctrine that nobody ought to resist: but it shews that when a madness is got among the people, they cannot think as they ought to do, and many unaccountable things will be done; and therefore he might think it no blemish to his reputation: and Dr. Sacheverell, that has been condemned for those things by the parliament, and stands convicted of being guilty of them, some people having made it honourable to him, others thought it might be an honour to them too, to demolish meeting-houses, and to raise seditions and riots, which are not to be borne in a civilized country; for nobody knows where popular tumults will end.*

This being then the matter of fact on both sides, and what there is in fact, and in presumption; give me leave to take notice what the law is in this case. For it has been insisted on by the counsel for the prisoner (and I must do them right, they have taken into consideration all the cases that relate to this matter)—They insist that this is not levying war; and on this ground, that he was not proved to be at the meeting-house in Drury-lane, but only at the fire at Dr. Burgess's; and if he was only at one place, one instance would not make it levying war. If, say they, there had been a general* intention, it would have gone hard with him; there was an intention the night before, and Mr. Burgess's was only mentioned; and it is not certain that there was a general design to pull down the rest. Nay, he was not there, and it was by accident that he came to Lincoln's-inn-fields, and he was but at that one place; and they take notice of some cases, especially that about the bawdy-houses, and that the lord-chief-justice Hale differed from the rest of the judges.†

This is a matter that has been often under consideration: the act of the 25th Edward the 3rd, which is the great law for declarations of treason, declares what shall be adjudged treason: compassing or imagining the death of the king, and levying war against the king, are two distinct species of treason. Now they say, that nothing was designed against the queen. If the levying war against the queen, was there meant only of a war against the queen's person, it would have been idle to mention it in that act, because they had before made the compassing her death to be treason.

Now he that levies war, does more than compass and imagine the king's death; therefore it has been always ruled, that where there is an actual levying of war, which concerns the person of the king, they lay the treason to be the compassing the death of the king, and give a proof of it by levying war. But there is another levying of war, which is not immediately against the person of the king, but only between some particular persons.‡ There is a vast

* "It must be admitted, that the object of a great riot or insurrection, comparatively trivial in its origin, may so far vary by its success, continuance, or other circumstances, as to assume a decided tone of resistance to the person of the king and his government, and so become an overt act of compassing his death. For it is a kind of natural or necessary consequence, lord Hale observes, that he who attempts to subdue the king cannot intend less than his death; and such, he adds, has always been the miserable consequence of such a contest." East's Pleas of the Crown, chap. 2, sect. 9.

* See Luders' Considerations on the Law of High Treason.

† Ibid.

‡ "Constructive levying of war is in truth more directed against the government than the person of the king; though in legal construction it is a levying war against the king himself. This is when an insurrection is raised to reform some national grievance, to alter the established law or religion, to punish magistrates, to introduce innovation of a public concern, to obstruct the execution of some general law by an armed force, or for any other purpose which usurps the government in matters of a public and general nature. On the trial of lord George Gordon, the court of King's-bench declared their unanimous opinion that an attempt, by intimidation and violence to force the repeal of a law, was a levying war against the king. The statute in question was the 18 Geo. 3, c. 60, for relieving Roman Catholics from certain penalties; and the treasonable act given in evidence against the prisoner, was the assembling a great multitude of people, and encouraging them to surround the two Houses of

difference between a man's going to remove an annoyance to himself, and going to remove a public nuisance, as the case of the bawdy-houses: and the general intention to pull them down all is the treason: for if those that were concerned for them would defend them, and the others would pull them down, there would be a war immediately.

In the case of inclosures, where the people of a town have had part of their common inclosed, though they have come with a great force to throw down that inclosure, yet that is not levy-

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Parliament, and commit different acts of violence there and elsewhere, with a view to intimidate them to a repeal of the statute. Insurrections of this nature, though not levelled directly against the person of the king, are yet an attack upon his regal office, and tend to dissolve all government, society, and order. The king is bound in duty to enforce the acts of the legislature, and uphold their authority: any resistance, therefore, to these, must, in its consequences, extend to the endangering of his person and government, by involving the state in a general distraction; on which account this species of treason falls properly within the clause of levying war against the king. Upon this principle the Yorkshire and Northumberland rioters, who opposed the militia laws, were convicted of high treason; and several of them were executed. But under this branch a bare conspiracy to levy such a war is not treason, unless the war be actually levied; in which case the conspirators, as well as the actors, would be all equally guilty.

"Of the same nature is an assembling together for the purpose of destroying all meeting-houses, or all bawdy-houses, under colour of reforming a public grievance; or an insurrection to reduce by force the general price of victuals, to inhance the common rate of wages, to level all inclosures, to expel all foreigners, to release all prisoners, or to reform by numbers, or an armed force, any real or imaginary grievance, of a public and general nature, in which the insurgents have no peculiar interest. Against such insurrections magistrates, sheriffs, and indeed all private persons, may use force to suppress them without any special commission, in the same manner as they may oppose foreign enemies coming hostilely into the kingdom.

"It was adjudged in Benstead's case, that going in a warlike manner to Lambeth-house to surprise the archbishop of Canterbury, who was a privy counsellor, it being with drums and a multitude of 300 persons, was treason. The true ground of this resolution Mr. Justice Foster considers to have been, that the attempt was made on account of measures which the king had taken or was then pursuing, at the instigation, as the rabble imagined, of the archbishop; in consequence of which they had deliberately, and upon a public invitation, attempted by numbers and open force to revenge themselves upon the privy counsellor for the acts of the sovereign. Perhaps it would be stating it more correctly to say, that it was an attack upon the king and his government in the person of his privy counsellor: but without the help of some such supposition the same learned judge thought there was nothing in the case as reported, which amounted to high-treason.

"Dammaree and Purchase were indicted severally, for that they, with a multitude of people, to the number of 500, armed and arrayed in a warlike manner, &c. did traiterously levy war, &c. It appeared that during Dr. Sacheverell's trial in 1709, the rabble, who had attended him from Westminster, to his lodgings in the Temple, continued there together for a short time, crying, among other cries of the day, 'Down with the Presbyterians.' At length a person unknown proposed to pull down the meeting-houses; and thereupon the cry became general, 'Down with the meeting-houses;' and some thousands immediately moved towards a meeting-house of Mr. Burgess, a Protestant Dissenting minister; the defendant Dammaree, a waterman, putting himself at the head of them and crying, 'Come on, boys; I will lead you; down with the meeting-houses.' They soon burnt Mr. Burgess's; after which they agreed to proceed to the rest of the meeting-houses: and hearing that the guards were coming to disperse them, they agreed for the greater dispatch to divide into several bodies, and to attack different houses at the same time; many of which were that night in part demolished, and the materials burnt in the streets. Dammaree put himself at the head of one of these parties, and demolished a meeting-house in Drury-lane, still crying that 'they would pull them all down that night.' While the materials of this house were burning in the street, Purchase, who had not, for aught appeared, taken part in any prior outrage, came up to the fire very drunk, and with a drawn sword in his hand encouraged the rabble, and incited them to resist the guards, who just then came up to disperse them; he himself assaulting the commanding officer and others, with his weapon; and calling to the rabble, 'Come on, boys, I will lose my life in the cause; I will fight the best of them.' All the judges present agreed that Dammaree was guilty of the treason charged; for there was a rising with an avowed intention to demolish all meeting-houses in general, which was carried into execution as far as they were able. It was a declaration by the rabble against the Act of Toleration, and an attempt to render it ineffectual by numbers and open force. Dammaree was accordingly convicted. In regard to the case of Purchase, there was some diversity of opinion among the judges present at the trial; because it did not appear that he had any concern in the original rising, or was present at, or active in any of the outrages of that night, except his behaviour at the bonfire in Drury-lane, whither he came by mere accident for

ing of war; but if any will go to pull down all inclosures, and make it a general thing to reform that which they think a nuisance, that necessarily makes a war between all the lords and the tenants. A bawdy-house is a nuisance, and may be punished as such; and if it be a particular prejudice to any one, if he himself should go in an unlawful manner to redress that prejudice, it might be only a riot; but if he will set up to pull them all down in general, he has taken the queen's right out of her hand: he has made it a general thing, and when they are once up, they may call every man's house a bawdy-house; and this is a general thing, it affects the whole nation.

Now to come to this instance. If you believe the evidence, Dammaree was concerned in pulling down two meeting-houses: he was not present at Drury-lane, that is, he was not proved to be there: but if he set others on to do it, it is his doing, and he as much pulled down that meeting-house in Drury-lane, as if he had pulled it down with his own hands. Besides, they tell you his declaration, that he would have all of them down. Again, these gentlemen do not seem to deny, but if the intention were general, it would be levying war: if it were general, where would it end? And it is taking on them the royal authority; nay, more, for the queen cannot pull them down till the law is altered: therefore he has here taken on him not only the royal authority, but a power that no person in England has.* It concerns all that are against the meeting-houses on one side, and all that are for them on the other, and therefore is levying-war.

They said, they would desire this point to be reserved to them on the account of the opinion of the lord chief justice Hale: But I believe this matter has been so often settled, that it would be strange for us to depart from such a settled rule of law; for these are only the same arguments that were offered by the lord-chief-justice; and he offered the same arguments that were used in queen Elizabeth's reign? but it was then held to be treason, and has been held so ever since. His objection made them consider it then, and they did so; and I suppose they will not expect that it should have more weight out of their mouths than out of his. It was then settled, and has been taken for law at all times since, so that it is not a matter now to be called in question. And as to the statute of 13 Eliz. the intention to levy war surely is not an intention to do a thing, which when it is done, is not levying war.

Thus the matter stands in point of law: I take it to be clear that it is levying war, if you take him to be guilty of being at one of the meeting-places, and leading them, and tempting them to another. Whether that is true, or not, is what must be left to your consideration. You have heard what has been said, and what difficulties arise in point of time, and on the other proofs: If you are of opinion, that he was present at Lincoln's-inn-fields, and did encourage them, and acted any otherwise than by force; if you believe he led, or invited them to another place, and pulled down that, then you will find him guilty of high treason. If you think he was not there, or was under a compulsion, then he will not be guilty. As for his being drunk, whether he was so or not, ought not to influence one way or other.

Cl. of Arr. Officer, take care of the jury. Lay your hand upon the book. (Which he did.)—You shall well and truly keep every one sworn of this inquest together in some private and convenient room, without meat, drink, candle, or lodging. You shall not suffer any person whatsoever to speak to them, or any of them, neither shall you yourself speak to them, until such time as they have delivered up their verdict, unless it be to ask them, whether they be agreed of their verdict? So help you God.

Then the prisoner was taken away, and the jury withdrew to the room provided for them, and after about an hour's consultation, agreed upon a verdict; and coming into court, were called over.

Cl. of Arr. Gentlemen of the Jury, answer to your names. Sir Edward Gould.

Sir *Edward Gould.* Here. (And so of the rest.)

Cl. of Arr. John Collis.

John Collis. Here.

Cl. of Arr. Gentlemen, are you agreed of your verdict?—*Omnes.* Yes.

Cl. of Arr. Who shall say for you?

Omnes. Our Foreman.

Cl. of Arr. Set Daniel Dammaree to the bar. (Which was done.)

Cl. of Arr. Daniel Dammaree, hold up thy

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ought appeared to the contrary. The jury therefore, by direction of the court, found a special verdict to the effect already mentioned. All the judges, on consideration, agreed in the guilt of Dammaree; and all but three held the same opinion in respect to Purchase; because the rabble were traiterously assembled, and in the very act of levying war when he joined them, and encouraged them to proceed, and assaulted the guards who were sent to suppress them. All this being done in defence and support of persons engaged in the very act of rebellion, involved him in the guilt of that treason in which the others were engaged. The ground of the opinion of the three dissenting judges was, because it was not directly found that he aided and assisted the traitors; though they agreed that the mob were continuing their act of treason when Purchase joined them. But from what I have before stated, this does not seem necessary, if the party be found to have done any act towards the execution of the traiterous design. For whoever joins deliberately in the execution of any unlawful act, must abide the consequences at his peril." East's Pleas of the Crown, chap. 2, sect. 17.

* See Luders' Considerations on the Law of High Treason, &c. ch. 2, p. 68, as quoted in the present case, p. 531, Note.

hand. (Which he did.) Gentlemen of the Jury, look upon the prisoner. How say you, is he guilty of the high treason, whereof he stands indicted, or Not Guilty?

Foreman. Guilty.

Cl. of Newgate. Look to him, keeper. Guilty of high-treason.

Cl. of Arr. What goods or chattels, lands or tenements had he at the time of the high-treason committed, or at any time since?

Foreman. None, to our knowledge.

Cl. of Arr. Then hearken to your verdict, as the Court has recorded it. You say that Daniel Dammaree is Guilty of the high-treason whereof he stands indicted, and that he had no goods or chattels, lands or tenements, at the time of the high-treason committed, or at any time since, to your knowledge: And so you say all.—*Omnes.* Yes.

Cl. of Arr. Gentlemen of the Jury, the Court discharges you, and thanks you for your service. Cryer, make proclamation.

Cryer. O Yes, O yes, O yes. All manner of persons, that have any thing more to do at this general sessions of the peace, sessions of Oyer and Terminer, and gaol-delivery of Newgate, holden for the city of London, sessions of Oyer and Terminer, and gaol-delivery of Newgate, holden for the county of Middlesex, may depart hence for this time, and give their attendance here again to-morrow morning at eight of the clock.

GOD save the QUEEN.

On Saturday the 21st of April, 1710, being the last day of the sessions, the lord mayor, and Mr. Serjeant Richardson, who acted as deputy-recorder, in the absence of sir Peter King, knt. recorder of the city of London, with several aldermen and justices of the peace for the county of Middlesex, came into court about six in the evening, and the Court being resumed, the prisoner, together with Sampson Archer, convicted the same sessions, for stealing a horse, was brought to the bar, to receive judgment; When the Court proceeded thus:

Cl. of Arr. Daniel Dammaree, hold up thy hand.—(Which he did.) You have been indicted for high treason, in levying open war within this kingdom, against her majesty; you have pleaded Not Guilty, and have put yourself for trial upon your country, which country have found you Guilty: What can you say for yourself, why the Court should not pronounce judgment against you, to die according to law?

Dammaree. My lord, I ask pardon of the queen and the law, which I confess myself to have offended in a very vile and unjustifiable manner, and humbly beg that my case may be favourably represented to her majesty; having no dependance but on her royal mercy.

Serj. *Richardson.* Have you any thing to offer by yourself, or counsel, which may be of service to you in arrest of judgment?

Dammaree. No, my lord.

Serj. *Richardson.* Then call upon the other prisoner.

Cl. of Arr. Sampson Archer, hold up thy hand.—(Which he did.) You have been indicted for feloniously stealing a bay gelding, the property of William Birch: You have pleaded Not Guilty, and put yourself for trial upon your country, which country hath found you Guilty: What can you say for yourself, why the Court should not proceed to give judgment against you to die according to law?

Archer. It is my first fact, and I pray that I may be transported.

Serj. *Richardson.* Is that all you have to say?

Archer. Yes, my lord.

Cl. of Arr. Then, Cryer, make proclamation.

Cryer. O Yes. All manner of persons are commanded to keep silence while judgment is giving, upon pain of imprisonment.

Serj. *Richardson.* You that are the prisoners at the bar, you have passed your trials for capital offences, of which you have been severally indicted: You have had patient hearings: One of you has had the assistance of counsel of great skill and ability, and all the liberty and indulgence you could, in reason, desire or wish for; but your guilt was so plain and evident, that every one that heard your trials must admit, that you stand justly convicted by the verdict of your country. Your crimes, as they are various in their natures, so they subject you to different punishments; but your sentences have this fatal similitude, that they both terminate in death: Which, though terrible in its nature, must of absolute necessity be inflicted by the civil magistrate, where the public peace is rebelliously broke, or private property notoriously invaded. Without these penal sanctions it is impossible that order and good government should subsist in any nation; and how movingly soever your present melancholy situation may plead for pity and compassion, yet the good of the whole, and the protection of the innocent, are considerations of much higher importance: And you have the less to offer for yourselves, since the nature of the crimes you have committed is such, as that they must be the effects of very vicious principles, or extravagant passions: One of you hath offered violence to a body of people, whom the law has thought fit to tolerate: and your manner of proceeding was attended with such desperate circumstances of terror and mischievousness, as threatened destruction and desolation to an innocent neighbourhood, when to your own malicious actions you added the fury of an element more cruel and merciless than yourself. You have indeed endeavoured to excuse yourself by pleading that your crime was the effect of drinking, which is a much weaker defence than your fellow prisoner makes, who says, he robbed out of necessity. Neither of these cases will justify a breach of the law in the least degree, much less will it excuse high-treason, or felony. The necessitous person, indeed, has a fairer claim to pity than the drunkard; for the latter voluntarily weakens his reason, and inflames his passions, and by that very action is guilty of an offence against common decency;

and the laws of the land; while it is possible the misfortunes of the other may be unavoidable, though they are too often the consequences of idleness, extravagance, and debauchery. We live in a trading country, and, I believe, there are few instances where a man in health, and of an honest character, may not earn the bread of industry, and eat it in security. It was for this purpose, for the security of the innocent, that the very laws were made by which you are now to suffer: And as these laws are founded upon an higher institution, even the laws of God, you will do well to consider yourselves as offenders against the laws of your Maker, and accountable not only for these crimes, but for every action of your lives, at a higher tribunal, at which you are likely to appear in a short time, perhaps in a few days. Upon these considerations, the lenity of our constitution gives a short respite to persons in your deplorable circumstances; and this city provides a clergyman, whose profession and experience enable him to advise, and assist you in making a proper preparation against your approaching change; to which important preparation I shall dismiss you, having first discharged the Court of the duty incumbent upon it, by pronouncing the several sentences the law has appointed.

You Daniel Dammaree, having been convicted of high-treason, the judgment of the law is, and the Court doth award:

'That you be carried from hence to the place 'from whence you came, and from thence be 'drawn upon a hurdle to the place of execu'tion, where you shall be hanged by the neck 'until you are almost dead, and being alive, 'you shall be cut down, your privy members 'shall be cut off, and your bowels taken out, 'and burnt before your face: that your head 'be severed from your body, and your body 'divided into four quarters, to be disposed as 'the queen shall appoint. And the Lord have 'mercy upon your soul.'

And you Sampson Archer, having been convicted of felony, with the benefit of clergy:* the judgment of the law upon you is, and it is awarded by the Court:

'That you return from hence to the place 'from whence you came, and that from thence 'you be conveyed to the place of execution; 'where you are to be hanged by the neck until 'you are dead; and the Lord have mercy on 'your soul.'

Dammaree. My lord, I desire my wife and children may have liberty to come and see me in prison, in the absence of the keeper.

Serj. *Richardson.* As for seeing your wife and children, that we do not deny you; but we cannot allow them to be alone with you, because it may occasion an escape.

Dammaree. My lord, if any other minister will be so kind as to visit me in my distress, I hope it will be permitted.

Serj. *Richardson.* Ay, by all means. It is a liberty that, I think, was never refused. You shall have all the favour that is usually shewn to persons in your condition.

Then the prisoner was taken away, and the Court proceeded to the other business of the sessions; and afterwards adjourned to Wednesday the 25th of May following.

Upon the Report of the prisoners' Cases to the queen, they both were reprieved; and some time after Dammaree received her most gracious pardon.

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* So in the former edition.

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444. The Trial of Francis Willis, a Footman, at the Sessions House in the Old-Bailey, for High Treason, in levying open War against her Majesty, in the Kingdom, under Pretence of pulling down Meeting Houses: 9 Anne, A. D. 1710 *.

Domina Regina *versus* Willis.

Die Veneris Vicesimo die Aprilis Anno Domini et Regine prædicto.

THE Court being resumed, as in the Trial of Dammaree, and the same judges being present,

Cl. of Arr. Middlesex cryer, make proclamation.

Cryer. O Yes, O Yes; you good men of the county of Middlesex, summoned to appear here this day, to try between our sovereign lady the queen, and the prisoners that shall be at the bar, answer to your names as you shall be called, every man at the first call upon pain and peril shall fall thereon.

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* See the Cases immediately preceding and following.

Then the Jury that were returned on the pannel, were all called over, and the appearances of all those that answered to the call, were recorded.

Cl. of Arr. Set Francis Willis to the bar. —(Which was done.)

Cl. of Arr. Francis Willis, hold up thy hand.—(Which he did.)

Cl. of Arr. You the prisoner at the bar, these good men, whom you shall hear called, and do now personally appear, are to pass between our sovereign lady the queen and you, upon trial of your life and death. If therefore you will challenge them, or any of them, your time is to speak to them as they come to the book to be sworn, and before they be sworn.

Willis. My lord, I desire that none of the

gentlemen that served upon the jury yesterday, may be sworn now.

L. C. J. (Parker.) You have a right to challenge five-and-thirty peremptorily, without shewing cause; and as many more as you can shew good cause against. If any of the jury that served yesterday appear now, it will be a proper time to take the exception.

Mr. *Darnell.* My lord, I take it, the prisoner's intent by this motion, is to save the time of the Court. He does not intend to make any challenges, but to the jury of yesterday, whom he conceives, in some measure, to have declared their opinions upon the fact already; and therefore desires the clerk may pass over their names as they stand upon the pannel.

L. C. J. Let it be so.

Cl. of Arr. Thomas Nicholls, esq.—(Who appeared.)

Cl. of Arr. Hold Mr. Nicholls the book.—You shall well and truly try, and true deliverance make between our sovereign lady the queen, and the prisoner at the bar whom you shall have in charge, and a true verdict give according to your evidence. So help you God.

Cl. of Arr. Joseph Spencer.—(He appeared, and was sworn.)

In like manner the other ten gentlemen appeared, and were sworn, whose names follow:

JURY.

Thomas Nicholls, esq.	William Breakspear,
Joseph Spencer,	Charles Gardner,
John Parsons,	Richard Hazzard,
William Hargrave,	Samuel Brown,
John Mills,	Francis Higgins,
Thomas Phillips,	Daniel Browne.

Cl. of Arr. Cryer, count these.—Thomas Nicholls.

Cryer. One, (and so of the rest.)

Cl. of Arr. Daniel Browne.

Cryer. Twelve good men and true, stand together, and hear your evidence.—Are you all sworn, gentlemen?

Cl. of Arr. Cryer, make proclamation.

Cryer. O Yes! If any one can inform my lords the queen's justices, the queen's serjeant, the queen's attorney-general, or this inquest now to be taken, of the high treason of which the prisoner at the bar stands indicted, let them come forth, and they shall be heard, for now the prisoner stands at the bar upon his deliverance; and all others that are bound by recognizance to give evidence against the prisoner at the bar, let them come forth, and give their evidence, or else they forfeit their recognizance. And all jurymen of Middlesex that have appeared and are not sworn, may depart the Court for this time, and give their attendance here again to-morrow morning.

Cl. of Arr. Francis Willis, hold up thy hand.—(Which he did.) Gentlemen of the jury, look upon the prisoner, and hearken to his cause. He stands indicted by the name of Francis Willis, late of the parish of St. Andrew, Holborn, in the county of Middlesex, labourer, for that he not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, &c. (*prout* in the indictment, *mutatis mutandis*), against the peace of our sovereign lady the queen, her crown and dignity, and against the form of the statute in that case made and provided. Upon this indictment he has been arraigned, and thereunto hath pleaded Not Guilty, and for his trial hath put himself upon God and his country, which country you are. Your charge is to enquire, whether he be guilty of the high-treason whereof he stands indicted, in manner and form as he stands indicted, or Not Guilty. If you find him Guilty, you are to enquire what goods and chattels, lands and tenements, he had at the time of the high-treason committed, or at any time sithence. If you find him Not Guilty, you are to enquire whether he fled for it: if you find that he fled for it, you are to enquire of his goods and chattels, lands and tenements, as if you had found him Guilty. If you find him Not Guilty, nor that he fled for it, you are to say so, and no more, and hear your evidence.

Mr. *Thompson.* May it please your lordship, and you gentlemen of the jury, Francis Willis, the prisoner at the bar, stands indicted, for that he, not having the fear of God before his eyes, but being moved by the instigation of the devil, and designing to withdraw the cordial love and natural obedience, which true and faithful subjects of our sovereign lady the queen do and ought to bear towards her, and intending to disturb the peace and common tranquillity of this kingdom, on the first of March last, in the parish of St. Andrew, Holborn, in the county of Middlesex, traitorously compassed and imagined to levy war, and stir up rebellion and insurrection against our said lady the queen within this kingdom: and that he might accomplish his said traitorous imaginations and designs, on the said first of March, and in the said parish being assembled, with a multitude and great number of people, armed and arrayed in a warlike manner, he did then and there unlawfully and traitorously levy war against our said lady the queen, contrary to the duty of his allegiance, against the peace of our said lady the queen, her crown and dignity.—To this Indictment he has pleaded Not Guilty.—Gentlemen, we shall call the evidence for the queen, and if they prove the charge, as laid in the Indictment, we doubt not but you will find him Guilty.

Att. Gen. My lord, the prisoner at the bar stands charged by this indictment for being one of those wicked rebellious persons, that had so little concern for her majesty, and his fellow-subjects, that upon the first day of March last, he assembled with a great number of other seditious and rebellious persons, to the disturbance of the peace of the queen, and her subjects. It is surprising to consider, that under the reign of a prince, so good as her majesty, any should be found so wicked as to be liable

to be charged with such a crime as this: when the courts are open and free, to punish any that offend against the laws of the land, that it should be thought necessary for such a number of people to get together, to do what is the duty of the magistrate, and for them to take upon them to punish offenders: but we know there are some that would bring all things into confusion, and the way to do it, is to proceed in this manner. It is not difficult, indeed, to know what the designs of these people were; you will hear it was pretended to be a design to pull down the meeting-houses, that is, the houses of those people that are unhappy enough to dissent from the Church. We shall shew that this was a design formed before, and resolved to be executed the first of March: that it was resolved by a great number of people met at the Temple, that the night following they would destroy the meeting-houses thereabout: that in execution of this design, there were, in several parts of this county, great numbers got together, and that they did make assaults on divers of her majesty's subjects, and did pull down many meeting-houses, gut them, as they call it, and bring the materials to their fires, and there destroy them. We shall shew that this man was not only at one, but at several of these bonfires; that he was there not as a spectator, but active, and had the vanity to be a captain of the mob; that he had got a curtain belonging to the meeting-house in Fetter-lane, that he put it upon a pole, and carried it at the head of the mob; that he came from that place to another fire in Hatton-garden, and was active in throwing the timber into the fire there. When we have proved this fact upon him, that he was concerned in this manner, your lordship will direct the gentlemen of the jury, that this meeting together with force, to work a reformation in the state, in order to pull down the meeting-houses, that this will amount to levying war, and high treason, as it is laid in the indictment.

Sol. Gen. My lord, the charge in the indictment has been fully opened, I shall only call the witnesses; and if we prove the fact, I take it to be clear, that it is levying war within the statute of the 25th of Edward the third.

Then *Thomas Tolboy* was sworn.

Sol. Gen. Pray acquaint my lord, and the jury, what you know of any design to pull down the meeting-houses.

Tolboy. My lord, as I went through the Temple, on Tuesday the 28th of February, I saw there a great mob, a great many thousands, and I heard them consult of demolishing Mr. Burgess's meeting-house.

Sol. Gen. What was the occasion of their being at the Temple?

Tolboy. They came with Dr. Sacheverell's coach home from Westminster.

Sol. Gen. When was this to be done?

Tolboy. It was to be done the next night.

Sol. Gen. You heard this discourse among them; was Mr. Burgess's meeting-house pulled down the next night?—*Tolboy.* Yes.

Sol. Gen. Were there any others pulled down?

Tolboy. I have been informed so; but I do not know myself.

Mr. *Darnell.* Was the talk particularly about Mr. Burgess's, or were any others mentioned?

Tolboy. Mr. Burgess's was mentioned; I do not remember any other mentioned.

L. C. J. You say no other was named. Was there any discourse of meeting-houses in general?

Tolboy. I do not remember any but his mentioned. Some said, we will go presently, and pull down Dr. Burgess's meeting-house; others were for deferring it till the morrow night; and others, till the event of the Doctor's trial.

Then *John Lunt* was sworn.

Att. Gen. Look upon the prisoner, and tell us if you know him.

Lunt. My lord, I stood within my own door in Kirby-street, that night that the mob was, and about eleven at night, he came over-against my door, and spoke these words, They made me captain of a party to-night.

Mr. *Darnell.* My lord, I must object against his giving in evidence what the prisoner told him.

Sol. Gen. Surely it is evidence what a man says.

Att. Gen. You say you know him; do you remember you saw him on Wednesday, the first of March last?

Lunt. I forgot the night: it was the night the meeting-house was pulled down in Hatton-garden.

Att. Gen. Did you see him alone, or were there others with him?

Lunt. He came right against my door, and nobody spoke to him as I saw; but he said, They had made him captain of a party that night.

Att. Gen. Stay, we will call another first.

Then *William Grove* was sworn.

Att. Gen. Pray, acquaint my lord, and the jury, whether you saw the prisoner the first of March last.

Grove. I never saw him till that night. I saw him with a long pole, and a curtain upon it, and he cried out A High-Church standard! He stopped several coaches, and got money from them, and made them cry, High-Church. But to swear that this is the man, I cannot.

Att. Gen. How many were there together?

Grove. Five or six hundred.

Att. Gen. Was there any thing like colours before them?

Grove. Yes, there was a curtain, and he that carried it, cried, High-Church standard! He stopped many coaches, and got money from them, and made them cry, High-Church.

Sol. Gen. Whence did he bring it?

Grove. From Mr. Bradbury's meeting, in Fetter-lane.

Sol. Gen. Did he carry it nowhere else?

Grove. I saw it nowhere but at the fire at Holborn.

Sol. Gen. Was there any fire in Hatton-garden?

Grove. Yes, there were three.

Sol. Gen. What were they made of?

Grove. Of the materials of Mr. Taylor's meeting-house.

Sol. Gen. Do you know of any others that were pulled down?

Grove. Yes, Mr. Burgess's.

Sol. Gen. Do you know of any others?

Grove. I have heard of others, but do not know them.

Att. Gen. After Willis was taken, you went to Newgate; now give an account, did you make any particular observations at the time you saw the man display the banner? Did you take any notice of him?—*Grove.* Yes.

Att. Gen. What did you take notice of him?

Grove. I took such notice, that I thought I should know him again.

Att. Gen. Now, did you go to Newgate to see him?

Grove. Yes; but the place was dark, and his clothes and wig were altered.

Att. Gen. What did you think of the man you saw in Newgate?

Grove. I did think it was the same man.

Att. Gen. Now look at him, and see whether this is the same you saw in Newgate?

Grove. His clothes were so much altered, that I cannot tell.

Att. Gen. Tell us, is that man the same?

Grove. I never saw him but that night, and in Newgate; and it was so dark, that I cannot say this is the man.

Sol. Gen. Do you remember what clothes he had?

Grove. I cannot tell whether they were blue or green.

Sol. Gen. Were there more that flourished colours; more than one?

Grove. I saw but one.

Mr. *Darnell.* Pray, at the time you saw that banner displayed, was there any other fire in Hatton-garden?

Grove. No; I believe this was made first; and then the mob said, They would go to Mr. Taylor's.

Mr. *Darnell.* What time was it that the fire was in Holborn?—*Grove.* About ten.

Mr. *Darnell.* What time was that in Hatton-garden?—*Grove.* About eleven.

Mr. *Darnell.* You say this curtain was brought out of Fetter-lane meeting. How do you know? Did you see it brought out of the meeting?

Grove. No; but I saw it brought out of the lane, and the people said it came from thence.

Mr. *Darnell.* Do you remember what coloured coat he had on?

Grove. I cannot tell; it was either blue or green.

Mr. *Darnell.* Do you remember what sort of hat he had on?—*Grove.* No.

Mr. *Darnell.* Was it a laced hat, or a plain one?—*Grove.* I cannot tell indeed.

Mr. *Darnell.* You say you looked hard at him?

Grove. Yes; but I never minded his hat.

Sol. Gen. You heard people say, the curtain was taken out of Mr. Bradbury's meeting: who were they that said so? The people that were concerned in the fire, or them that stood by?—*Grove.* Them that stood by, as I might.

L. C. Baron. You say you went to Newgate shortly after this, to see this man?

Grove. Yes, my lord.

L. C. Baron. And the man that you saw there, do you believe, or do you not, to be the prisoner at the bar?

Grove. Yes, I do believe it was.

Mr. *Darnell.* Are you positive this is the man?—*Grove.* No, I am not.

L. C. J. When you went to Newgate, the man that you saw there, did you believe him to be the person that you saw displaying the colours?—*Grove.* Yes, I did.

L. C. J. How long was that after you saw him at the fire?—*Grove.* About ten days.

L. C. Baron. Pray, what makes you less knowing, or believing now, than you was then?

Grove. My lord, his clothes are altered, and he has another wig on.

Mr. *Darnell.* Pray tell us any one thing you had, to know this man by?

Grove. No other instance, but that he flourished the colours.

Mr. *Darnell.* Do you know the colour of his coat?—*Grove.* I believe it was blue.

Mr. *Darnell.* Are you sure it was not green?

Grove. I am not sure.

Mr. *Darnell.* When you saw him in Newgate, what did you know him by?

Grove. By his features, I thought he was the same man.

Mr. *Darnell.* Pray describe any one feature you knew him by.

L. C. J. It is difficult to describe a man's face, and so it is to describe his hand. If you were asked how you knew a man's hand? it would be difficult for you to describe it; and so if you were asked, how you know any man's face in court, unless there was something very particular in his face; and yet there is something in the composition of a face, by which it is known, which none perhaps but a painter can describe.

Sol. Gen. You say he is altered from what he was in Newgate? Has he not the same clothes on?

Grove. He has quite another dress, and another wig, he had blue clothes on there.

Sol. Gen. And you say, you believe the man that had the colours, had blue clothes?

Grove. Yes, indeed I take them to be blue; but cannot be positive whether they were blue or green.

Sol. Gen. You have spoken about this matter already, on your examination, you have formerly considered it coolly, you ought to consider what you have said before, and to re-

collect yourself. The man you saw in Newgate, what coat had he on?

Grove. He had blue.

Sol. Gen. I ask you, whether the man that furnished the colours had blue?

Grove. It was blue or green.

Sol. Gen. Which of the two do you believe it to be?

Grove. Indeed I cannot well tell.

Sol. Gen. The man in Newgate, what kind of wig had he?

Grove. A wig that fell more off from his face.

Sol. Gen. What sort of wig had the man with the colours? Was it that kind of wig which the man had in Newgate?

Grove. I think it was not.

Sol. Gen. Do you believe this man to be him that you saw in Newgate?

Grove. Indeed I cannot believe him to be the same.

Sol. Gen. Pray who brought that man to you?—*Grove.* It was Mr. Hill, the keeper.

Sol. Gen. Is he here? Let him be called.

Then Mr. *Hill* was sworn.

Att. Gen. Do you remember Mr. Grove's coming to see the prisoner in Newgate?

Hill. I never saw any body come while I was there.

Sol. Gen. Do you remember that he came to see any of the prisoners?

Grove. Justice Blackerby's clerk came with me, and we had a quartern of brandy.

Hill. I did not remember him before, but I remember Justice Blackerby's clerk came, and somebody with him.

Sol. Gen. Who did you shew him?

Hill. The prisoner at the bar.

Sol. Gen. What dress was he in then? Do you remember?—*Hill.* No.

Sol. Gen. Did you carry him to any other but the prisoner?

Hill. No; there were others upon the stairs, but they were women.

Sol. Gen. Was there any other prisoner?

Hill. No.

Sol. Gen. And is this the man?—*Hill.* Yes.

L. C. J. Do you remember what clothes he had when he first came to Newgate; or at any time after?

Hill. I do not know any but them he has on; I was not in the way when he came in.

Mr. *Darnell.* Did you go up with that man?

Hill. Yes.

Mr. *Darnell.* Did you go into the room where the prisoner was?

Hill. I went to the grates.

Att. Gen. When I asked you at first whether he was at Newgate, you could not remember till he refreshed your memory with a quartern of brandy.

L. C. J. Are you sure you shewed him the prisoner at the bar?—*Hill.* Yes.

L. C. J. Did you shew him any other?

Hill. No.

Mr. *Darnell.* You say you never saw him in any other clothes than those he has on?

Hill. No, never; I was not there when he came in.

Then *Hugh Victor* was sworn.

Sol. Gen. Pray, acquaint my lord and the jury, what you know of the pulling down the meeting-houses, and what concern the prisoner had in it.

Victor. I was by at a neighbour's door, near the meeting-house in Leather-lane.

Sol. Gen. Where was the mob then?

Victor. They came out of Holborn to Leather-lane.

Sol. Gen. Was the bonfire in Holborn made before that in Leather-lane?—*Victor.* Yes.

Sol. Gen. That fire in Holborn, what was it made of?

Victor. I cannot tell any thing of that.

Sol. Gen. When the mob came into Fetter-lane, what did they do?

Victor. I believe I saw one hundred and fifty men there, and they were as hard at work as they could be, in breaking down the inside of the meeting-house.

Sol. Gen. What did they do with the materials?

Victor. I saw some of them, as I think, on that young man's back. When the thing was almost over, I went near Mr. Lunt's door, and I saw him with some boards on his shoulders.

Att. Gen. Look upon him: Are you sure that is the man?—*Victor.* Yes.

Att. Gen. What did he do?

Victor. I saw upon his shoulders some wood; he carried it to the fire, and threw it in, and made an huzza; When he had done, he came up again, and spoke some words to Mr. Lunt.

Att. Gen. Did that same man afterwards come up, and speak to Mr. Lunt?

Victor. Yes; but what he said I cannot tell.

Sol. Gen. Do you know what cloaths he had on?

Victor. I do not know his cloaths, but I can remember him from a thousand: I saw him throw in the wood, and after he went from the fire, I kept my eye on him till he came up to Mr. Lunt's door, and I asked Mr. Lunt, if he knew him? He said, yes, he was Mr. Miles's man.

Mr. *Darnell.* What did you take notice of him by?

Victor. I know him by his face, though I never saw him before.

Mr. *Darnell.* What is there remarkable in it?

Victor. I observed him as he threw in the wood, and kept my eye on him till he came to Mr. Lunt's.

Mr. *Darnell.* What cloaths had he on?

Victor. He was in a livery, but what sort of a livery I cannot tell.

Mr. *Darnell.* When did you see him again?

Victor. The next night: I knew him when I saw him before the justice.

Att. Gen. Are you sure, that the man you saw that night, and the next night, is the same man?—*Victor.* Yes.

Mr. *Darnell.* Was it not dark?

Victor. There was the light of the fire.

Mr. *Darnell.* Did you see him by no other light than the fire?—*Victor.* No.

Mr. *Darnell.* How far was he from it?

Victor. As far as to the other side the way.

Mr. *Darnell.* Were there not a great many people there then?

Victor. Not so many as there had been at first; they were drawing away.

Mr. *Darnell.* Which fire was this at? At Hatton-Garden, or Holborn?

Victor. At Hatton-garden.

Sol. Gen. You say you saw him at Mr. Lunt's door, and there you took notice of him; How far was the fire from this door?

Victor. As far as to the middle of the yard.

Then Mr. *Lunt* was sworn.

Att. Gen. Your house, I think, is near where the fire was?

Lunt. Yes; within three doors.

Att. Gen. What time was the fire?

Lunt. About eleven o'clock.

Att. Gen. Was there a great number of people there?—*Lunt.* Yes.

Att. Gen. What was thrown into the fire?

Lunt. I cannot tell; I did not so much as go out of my door.

Att. Gen. Did you see the prisoner that night?

Lunt. He came right against my door: He knew me, for I worked for his master. He came against my door, and spoke two or three words, but I gave him no answer.

Att. Gen. Is this the man that Mr. Victor asked you, whether you knew him?

Lunt. And as he spoke those words to me, Mr. Victor asked me if I knew him: I said, yes, he is Mr. Miles's man. My boy called him by his name, and said, What, Frank, are you among them: And that made Mr. Victor ask, if I knew him?

Sol. Gen. What passed between you and him?

Mr. *Darnell.* My lord, we humbly submit it, that what he has said, cannot be made use of against him; for the statute of the seventh of king William directs, that he shall not have any evidence given against him relating to his word; for the act directs, that after the 25th of March, 1696, no person shall be attainted of high-treason whereby corruption of blood may be made, or of misprision of such treason, but by the oaths and testimony of two lawful witnesses, either, both to the same overt-act, or one to one, and the other to another overt-act of the same treason, unless the party willingly, in open court, confess the same, or stand mute, &c.*

L. C. J. Where do you find in that act, that what he confesses is not to be given in evidence?

Mr. *Darnell.* Because that act provides, that none shall be tried but upon the oaths of two witnesses to an overt-act. Unless the person shall confess in open court, he shall be tried by the oaths of witnesses to an overt-act. Now to what he has done they may call witnesses; but to what he has said, we hope they shall not. Confessions are, in all cases, a dangerous evidence, and to be used very cautiously. It has been disputed, and so is the case in Anderson, whether any examinations shall be used against them, but those which are before a magistrate?

Just. *Tracy.* It was quite otherwise in the case of capt. Smith. The question is only, whether he shall be convicted upon that proof alone?

L. C. J. If you make any objection on this head, it will be proper when they close their evidence. If there is no other evidence, you may then make this objection, whether he shall be convicted on that evidence singly. Suppose two witnesses prove an overt-act, and besides them there should be others to prove his confession, is not that act complied with, when some prove the fact, and others come in confirmation of them? It does not follow but that if there be two witnesses to overt-acts, there may be as many others to prove confessions; It does not say, that no evidence shall be given but of overt-acts.

L. C. Baron. If a man confesses before a magistrate that he is guilty of treason, and that confession of his should be proved by two witnesses, it may be disputed, whether he shall be convicted on that evidence, because it is said, there must be two witnesses to an overt-act. If they have no other evidence but his confession, then will be a proper time to make your objection; but till then, there is no reason to object against what is now offered.

Mr. *Darnell.* It is expressly the words of the book, that examinations before a magistrate shall be evidence, which seems to imply the negative, that others shall not be.

Sol. Gen. The question was, whether that confession was sufficient to convict? And not, whether it should be given in evidence? Let us go on; if our evidence is not sufficient, you will take notice of it.

Att. Gen. Mr. Darnell would stop the witness; as if there was something in that act, or in the law, that shall restrain you from hearing what this man did confess of this fact: No, surely, there is nothing that can hinder that evidence. The act does not hinder any thing in point of evidence, when it says, you shall not convict a man unless there be two witnesses to the fact: It does not say you shall hear no other evidence. This indeed was mentioned in the case of capt. Smith: he had the French king's commission, and it was lost among other papers: He was shewn the parchment, and owned it, and that confession of his, that he had such commission, was given in evidence.

Sol. Gen. According to this objection, he would exclude all confessions from being evidence. He opposes our examining to the confession of the prisoner, before he knows what it was that he did confess. Now this act was

* See Hawkins's Pleas of the Crown, book 2, chap. 25, s. 141, &c. chap. 46, sect. 45, and East's Pleas of the Crown, chap. 2, sect. 66.

never intended to exclude all evidence to confessions; all that it requires, is to have two witnesses to overt-acts. The question is not now, whether a confession shall be an evidence of an overt-act? But, whether any confession whatsoever may be given in evidence? And surely it was agreed in the case of captain Smith, that his confession, as to the circumstances, was evidence, but not as to the overt-act. On the trial of Ball,* the question was whether he was an Englishman? His confession was evidence to that purpose, admitting it was not to the overt-act. We shall not call this man to prove a confession of an overt-act, but to prove his confession in general, what was the occasion of his being abroad that night, and that is proper evidence; for this tumult must be either a riot, or levying war, according to the intention of those that got together: What shall explain that intention, but the confession and declaration of the people that were got together? So that we hope we are proper to examine to this point.

Mr. Darnell. I remember the case of captain Smith: I remember they brought some that knew the hand of the admiral of France, to prove, that they saw his hand to the commission; but his confession was not admitted as evidence.

Justice *Tracy.* I never knew it disputed, but a man's confession might be given in evidence.

Mr. Darnell. The act says, he shall not be tried, but on the oaths of two witnesses to an overt-act, unless the party willingly, in open court, confess the same; which shews what confession it is that is to be admitted of.

L. C. J. Then you say, no confession shall be given in evidence: Now, pray, what words are there in the act, that say no confession shall be given in evidence?

L. C. Baron. A confession shall not supply the want of a witness; there shall be two witnesses to the treason notwithstanding: But to say it shall not be given in evidence, there is no ground for it.

Att. Gen. Mr. Lunt, pray tell us what was it that passed between you and the prisoner?

Lunt. All that he said to me, when he came before my door, was, that they made him captain of a party that night; that he took a piece of a window-curtain, and made it a colours, and we burnt the clock in Holborn.

Att. Gen. And is this the man?

Lunt. Yes.

Sol. Gen. Do you remember what cloaths he had on?

Lunt. I do not remember the colour.

Sol. Gen. What is the livery his master gives?—*Lunt.* A blue.

Willis. Did I say I burnt it, or that the company burnt it?—*Lunt.* He said, we burnt.

Att. Gen. That is, he and the rest of the mob.

Mr. *Darnell.* You did not see him do any thing?—*Lunt.* Nothing at all.

Then *Robert Cubwidge* was sworn.

Sol. Gen. Do you know Mr. Grove?

Cubwidge. Yes.

Sol. Gen. Do you remember you went with him to see a prisoner?—*Cubwidge.* Yes.

Sol. Gen. What prisoner did you see there?

Cubwidge. The prisoner at the bar.

Sol. Gen. Did you see any other prisoner but him?

Cubwidge. No: We saw Dammaree and Purchase below, but no other above.

Sol. Gen. What cloaths had he on then?

Cubwidge. He had a blue livery on.

Then *William Orrel* was sworn.

Att. Gen. Pray acquaint the court and the jury what you know of the tumult which was the 1st of March last, in those parts where you was.

Orrel. I do not know any thing of the prisoner at the bar; but when I came to the end of Fetter-lane, there was a footman in a blue livery, a clever-shaped man of his size. I saw the constable there, and said to him, Here is a great riot, I am sorry you cannot put a stop to it: Says he, Here is such a mob, we cannot suppress it: Says he, There is a footman there, I know him very well; I know whose man he is. I cannot tell who he was, but I saw a footman there huzzaing, and bidding them make haste. I went into the meeting-house in Fetter-lane, and saw the timber pulled down, and thrown into the fire.

Att. Gen. You was at that meeting-house in Fetter-lane; was you at any other?

Orrel. I was at Mr. Burgess's and Mr. Earl's, and at that in Black-friars: I went with the guards thither.

Att. Gen. Give an account of that.

Orrel. When I was in Lincoln's-inn-fields, the cry was, To the city, to the Bank. When I came to the guards, I said to the captain, For God's sake go into the city, for if they go to the Bank, we are undone; for there was a report, that they were gone into the city. I asked several persons as we went along, where is the mob? Are they gone into the city? At last I heard they were gone to the meeting-house in Black-friars, and were pulling it down. I went directly with the guards up Fleet-lane; I headed them in the Old Bailey, and run before, and got the gates open, and told them, the queen's guards were coming: I shewed them the way to the meeting-house, and there they met the mob pulling it down.

Att. Gen. Do you know of any other meeting-house that was pulled down? Was you at Mr. Burgess's?

Orrel. I was in it four times: I saw it full of people: I saw the galleries and pulpit beaten in, and pulled down; and as I stood upon a board, a fellow was pulling it up, and swore, God damn that lazy fellow, what does he do there?

* Mr. Justice Foster, in his Reports, p. 242, says, "I think Vaughan's is the case cited in Willis's trial, by the name of Ball."—*Former Edition.*

Att. Gen. You say you was there four times?

Orrel. Yes, I was in Mr. Burgess's four times, twice in Mr. Earl's, once in Mr. Bradbury's, and at the door of Black-friars.

L. C. J. What was the cry there?

Orrel. Nothing but in general, Damn them, we will have them all down. I heard Mr. Dolben's house enquired for, but they mentioned my lord Wharton's and St. James's often; I believe I heard it called out a thousand times: And when I was at Mr. Earl's in Drury-lane, I called out, Where is Jolly, the waterman? because I wanted to know where he was: Some said, he is gone to St. James's; others, to my lord Wharton's; No, said others, he is gone to the back-door to break it open.

Mr. *Darnell.* You say you saw a footman at the fire; pray, what time of night was it?

Orrel. About ten, or a little after. As I went from Fetter-lane, I went along with them, as they carried the wood to Holborn, (but went at a distance on the other side the way) I saw the footman at the end of the alley, as you come out of the meeting.

Mr. *Darnell.* Was that before the fire was lighted, or after?

Orrel. It was after the fire was lighted.

Mr. *Darnell.* What was the footman doing?

Orrel. He was hallooing and huzzaing the mob.

Att. Gen. My lord, we have done with our evidence for the queen, and submit it to your lordship.

Mr. *Darnell.* My lord, I am counsel for the prisoner, who stands accused of high-treason, and the instance is in levying war against the queen. To make this out, the gentlemen of the other side begun with shewing, that there was an intention to pull down meeting-houses in general, that was opened: To make that out, the first witness, Tolboy, says, that as he was going through the Temple, he heard a great cry among the mob, that they would go and pull down Mr. Burgess's meeting-house; it does not appear, that there was any more named. I must agree, if the design were to pull them down in general, and he acted in that design, I can make no question, but it would be high-treason; but if the design was only to pull down Dr. Burgess's, it was only a particular injury to him, he might have his remedy by an action for it, and the government might prosecute him for a riot, but if that be the case alone, that cannot be high-treason: There must be a general intent to pull down houses, or inclosures, and not to pull down any particular man's house or inclosure.

After he has given this account, the other witnesses give an account, that at some of the fires, there was a discourse of going further, and pulling down all the meeting-houses about the town; but the original intent was only to pull down one. If, at that first fire, they should take a new resolution to pull down another, that would still be a particular injury; and so if they should carry it never so far that way, it would not be high treason, otherwise then as it is an evidence of a general intent: But if the fact were particular, though they took that resolution twenty times one after another, yet it would not amount to high treason. But to bring it home to the prisoner, to shew that he was concerned in the design, we submit it, that there is not such evidence as is required to fix it upon him. The first witness to that point is Grove: He says there was a man in a livery, whether blue or green he cannot tell: Sometimes he said it was green, sometimes blue; but being asked, he is not sure the prisoner is the man that he saw with a banner encouraging the mob. If he cannot be certain as to the man, his evidence cannot be confirmed by Lunt, who only speaks of the prisoner's confession; for they said they would not use that confession to fix the overt act: And if it is not so, then Grove's evidence is out of the case. They would endeavour to support it by the officer of Newgate, who carried Grove to the prisoner; he says there was no other man in the room, and therefore it must be the prisoner who was shewed to Grove; and then, says Grove, the man I saw in Newgate, I believe to be the same I saw at the fire; so that it is altogether uncertain, as to Grove's evidence. Then they call Victor; he says he saw a footman carry some of the timber, and throw it into the fire; and that he saw the same man talk to Lunt; and Lunt is to support that evidence, by saying, that the prisoner came and talked to him; but Lunt does not pretend that he saw the prisoner do any thing. It is scarce to be believed, that Victor should take notice of his features, so as to know him again, especially seeing his are not very remarkable, and there was no light, but the light of the fire: And after all, he cannot tell you any one feature that is remarkable, nor did he take notice of his cloaths, or any thing remarkable about him. The description of a person is a constant evidence that you meet with, in case of a robbery, or the like; you have the description of the colour of the horse, or the man's cloaths, or some such thing; but he does not pretend to any one circumstance to induce him to believe he is the same man, but only that he is satisfied, for reasons he keeps to himself. These are the only two persons they have the least colour to say are witnesses to any overt-act, and without two he cannot be convicted; and these are to be supported by Lunt's evidence, that the prisoner told him they had made him a captain, and that he had made colours of a curtain, and that they had burnt the clock. We think the act is not sufficiently proved by two witnesses, and therefore cannot be supported by a confession, which is but a dangerous sort of evidence in all cases, and a man is not to be found guilty upon a confession; and for that reason, the statute takes care, there shall be two witnesses to an overt act: We therefore submit it, that this evidence is not sufficient to convict the prisoner.

But, my lord, the prisoner's case, we appre-

head, is such, as will, in a great measure, excuse him from any guilt; and we hope to satisfy your lordship and the jury, that he was not concerned in this design, or in aiding or assisting those that were actors in it. The prisoner is a servant to one Madam Miles, who lives in Grevill-street, near Hatton-garden; he has lived there two years, and has been all that time, a diligent servant, and behaved himself well in the family; and I believe, all the assistance he has to enable him to make his defence, is owing to their charity, which we think is an argument of his good behaviour, that his master and mistress will interpose, and endeavour to bring him off in a thing of this kind. It was the first of March last, when this insurrection was all over the town, and they came to Holborn, and with the materials of a meeting-house they made a great fire near this lady's house: I think, about half an hour after ten was the first notice that they had at this house that there was a fire: The lady of the house was going to bed, and in her chamber they saw so great a light, that they thought the fire was near; they called to the prisoner, and he was going to bed too; they ordered him to go and learn where the fire was, for they knew not what sort of fire it was: Upon that he went to learn what the occasion of it was. There they served him, as upon this occasion they did every body, they made them pay obedience, as they call it, and halloo, and throw up their hats. It is not to be supposed it was very readily learnt what the design was, and where they had the materials: As soon as he had informed himself, I think we shall shew, that he got out of the crowd as fast as he could, and was going home to acquaint his lady; that as he was going home, he was told there was another fire in Hatton-garden; and he thinking he did not pursue his lady's instructions without learning what this was, accordingly he struck over the way, and went into Hatton-garden, and there found it was the same design, and the materials of another meeting-house were brought thither, and burning. As soon as he had thus informed himself, he came to his lady, and informed her, that the mob was up, that they were pulling down the meeting-houses, and that he had seen two fires. After he had given this account, they ordered the doors to be shut up, and the family went to bed, and after that, he was not out of the house. Now, as to the business of the banner, there is not evidence to fix it upon him: And if we shew, that he went alone from Holborn, it must be believed, that it was some other footman, in some other livery; for if he was their captain, and carried the colours upon a pole, it was not his business, nor would they have suffered him to leave them there in Holborn, when they were going to make another fire. It is pretty extraordinary to suppose where he could get a pole to carry a banner of that kind. But if he was coming home by himself, without any mob with him, sure it is pretty extraordinary that the captain of the mob, so considerable a man as he, could go in so private a manner. We will call our witnesses, and hope the evidence will make it plain, that he did nothing but according to the commands of his mistress.

Then Mrs. *Brisco* was sworn.

Mr. *Darnell.* Pray, Madam, acquaint my lord and the jury, whether the prisoner has lived at any time, and how long with Mrs. Miles.

Brisco. He has lived there two years next May.

Mr. *Darnell.* In all that time, how has he behaved himself?

Brisco. A very civil, honest fellow.

Mr. *Darnell.* Did you ever know him guilty of drinking, or staying out at nights?

Brisco. He has always carried himself very civilly.

Mr. *Darnell.* Pray, at the time of this disturbance, do you know the occasion of his going out?

Brisco. I was in my mother's chamber while she was going to bed, and I saw a fire, and heard a great noise; I called to my sister, who was below, and bid her send Frank to know what the matter was.

Mr. *Darnell.* Did he go accordingly?

Brisco. Yes.

Mr. *Darnell.* You say you bid her send Frank; Who do you mean by that?

Brisco. I mean the prisoner at the bar.

Then Mrs. *Miles* was sworn.

Mr. *Darnell.* Madam, you heard what Mrs. Brisco said, that she desired you to send Frank, the prisoner, to see what the matter was: Did you send him?

Miles. My sister called to me, and said, she believed there was a fire in Holborn, and bid me send him to see; which I did.

Mr. *Thomson.* Pray, what time was this?

Miles. It was past ten; the clock had struck before my mother went up.

Mr. *Thomson.* How much after ten might it be?

Miles. Indeed I cannot tell; but I am sure it was past ten.

Mr. *Thomson.* What time was it before he came back?

Miles. I believe the clock had not struck twelve, to the best of my memory.

Mr. *Darnell.* What account did he give you when he came back?

Miles. I did not see him that night.

Mr. *Darnell.* What did he say next day?

Miles. He said they had burnt the meetings: I asked him if he had done any thing? He said, nothing to harm him.

Mr. *Darnell.* Where is Mrs. Miles's house?

Miles. In Grevill-street; the back of our house looks into Furnival's-inn.

L. C. J. Had not you the curiosity to know what account he brought?

Miles. I was not below; my sister was.

L. C. J. How came you to ask him, whether he had done any thing?

Miles. Because next day he had notice given him that Lunt intended to swear against him: At supper I saw him look very dull; and having heard of this in the house, I asked him if he had done any thing to occasion it? He said, No, indeed.

L. C. J. How long was it before he was taken up?

Miles. It was Thursday night.

L. C. J. I would ask Mrs. Brisco, pray what account did he give you?

Brisco. I cannot be particular as to that; but only that they had burnt the meeting-houses, but he did not say that he had helped to do it.

L. C. J. About what o'clock was it when he came home?

Brisco. To the best of my knowledge, the clock had not struck twelve.

L. C. J. Was not you impatient at his staying so long out?

Brisco. It was not full two hours.

L. C. J. Did you not ask him why he staid so long?

Brisco. I was angry that he staid so long: I think he said, he never saw a mob in London before; and to my knowledge he was not in any of the mobs before.

L. C. J. Did he give no account of what was done there?

Brisco. I do not remember he did.

L. C. J. Did he give you any account of the curtain he carried?

Brisco. I do not remember any thing, my lord.

L. C. J. That is a pretty remarkable thing.

Brisco. I heard afterwards of a curtain.

L. C. J. When did you hear of it?

Brisco. When he was before the justice.

L. C. Baron. Did you see any more fires than one, when you sent him out?

Brisco. No, my lord.

L. C. Baron. Where did you expect the fire to be?

Brisco. I thought it was in Holborn.

L. C. Baron. Did you hear of any fire in Hatton-Garden?

Brisco. Yes, afterwards I did.

L. C. Baron. But you did not know of any there when you sent him out?

Brisco. No, my lord.

Then *Mary Hodges* was sworn.

Mr. *Darnell.* Do you know the prisoner at the bar?

Hodges. My lord, he is my fellow-servant.

Mr. *Darnell.* What time of night was it when your mistress sent him out?

Hodges. It was past ten.

Mr. *Darnell.* What was he sent for?

Hodges. It was to see if there was a fire in Holborn.

Mr. *Darnell.* Then the fire was burning before he went out?

Hodges. Yes, my lord.

Mr. *Darnell.* How long had it been burning?

Hodges. I cannot tell; my mistress was going to bed about ten, and one of the young ladies saw the fire, and called out to him to go and see what it was.

Mr. *Darnell.* Was you there when he came back?

Hodges. I was not there; for I had a relation that was ill, and my mistress gave me leave to go and sit up with her.

Then *Elizabeth Elliot* was sworn.

Mr. *Darnell.* Do you know the prisoner at the bar?—*Elliot.* Yes.

Mr. *Darnell.* Do you remember the night the fire was in Holborn?

Elliot. It was St. David's day.

Mr. *Darnell.* Was he sent out that night?

Elliot. He was sent to see the fire at Holborn; my lady sent him to see if there was a fire.

Mr. *Darnell.* Did he go out for that?

Elliot. Yes.

Mr. *Darnell.* Was you there when he came back?—*Elliot.* Yes; I let him in.

Mr. *Darnell.* When he came back, what did he do? Did he go to bed?—*Elliot.* Yes.

Mr. *Darnell.* What account did he bring of the fire?

Elliot. I do not know what account he brought of it.

Att. Gen. Was you up when he came home?

Elliot. Yes.

Att. Gen. What o'clock was it?

Elliot. The clock had not struck twelve.

L. C. J. You cannot remember, it may be, the whole account he gave when he came back; but do you remember nothing of it?

Elliot. No.

L. C. J. Not a word?—*Elliot.* No.

L. C. J. Was he not asked how he came to stay so long?

Elliot. No, not in my hearing.

L. C. J. Were your young mistresses going to bed, as well as the old one?

Elliot. No; they staid up till he came in.

L. C. J. But were they designing to go to bed before he went out?

Elliot. Yes; we were going to bed presently.

L. C. J. Well then, when you had staid up so long as twelve, were there no questions asked how he came to keep you up so long?

Elliot. The ladies asked him, what made him stay? He said, he never saw a mob before.

L. C. J. But I suppose he told you what diversion he had had there?

Elliot. No; I did not hear him say any thing of it.

L. C. J. He told you nothing of the fire, or the colours?—*Elliot.* No; nothing.

L. C. J. Did not the ladies ask what that fire was?

Elliot. Not in my hearing.

Sol. Gen. It is strange he should be sent out to enquire after the fire, and not be asked any thing about it: was no enquiry made of the errand he was sent about?

Elliot. Not in my hearing.

Mr. Thomson. Had you no discourse with him—*Elliot.* No.

Mr. Thomson. Did you talk nothing of it the next day?—*Elliot.* No.

Sol. Gen. Did he give no account the next day, or at any time after, of what passed?

Elliot. No, not in my hearing.

L. C. J. What clothes was he in that night?

Elliot. He was in his livery.

L. C. J. What is his livery?

Elliot. It is blue, with black buttons, and trimmed with black.

Then Mr. *Pryor* was sworn.

Mr. Darnell. Pray acquaint my lord and the jury, whether you saw the prisoner at the bar, any time at the fire in Holborn, and before that in Hatton-Garden?

Pryor. As I was coming down Holborn, I had been at Westminster; I came to Leather-lane end, and there I light of the prisoner at the bar.

Mr. Darnell. Where was you going?

Pryor. I was going home to Clerkenwell: I saw Willis in Holborn: he cries out, who comes there, Mr. Pryor?

Mr. Darnell. Where was Willis?

Pryor. He stood at the end of Leather-lane, and he and I walked down together along Leather-lane, to Grevill-street: he told me he lived there with Mrs. Miles. I asked him, shall we drink a mug of beer? With all my heart, says he; but my lady has sent me out to see what the matter is: so we walked talking together as far as Brooks-market; and there were a great many people hallooing for High-Church and Sacheverell; so we parted there, and did not go in to drink, because there was a great mob about.

Mr. Darnell. You say he parted from you to go home; was any body with him?

Pryor. No.

Mr. Darnell. Was there any curtain, or colours, or stick?—*Pryor.* No.

Mr. Darnell. Was there any body, or any mob, that claimed him as their captain?

Pryor. No; I saw nobody speak to him.

Mr. Darnell. Did you afterwards see the fire in Hatton-Garden?

Pryor. They were just going to light it.

Mr. Darnell. What were they doing at the meeting-house in Leather-lane?

Pryor. They were pulling it down, and carrying it to Hatton-Garden.

Mr. Darnell. Did the prisoner carry any of it?

Pryor. I did not see him carry any.

Att. Gen. What time of night was this?

Pryor. It was eleven, or thereabouts; I cannot tell whether it was over or under.

Sol. Gen. At which end of Leather-lane did you see him?—*Pryor.* In Holborn.

Sol. Gen. Was not the way you walked with him, as well the way to Hatton-garden, as to Grevill-street?

Pryor. It was his way as well to the one as the other.

Sol. Gen. Did you leave him standing in the street, or how did you part?

Pryor. We shook hands, and he said, I must go and tell my lady how it is.

Sol. Gen. What time of night was it?

Pryor. As nigh as I can guess, 11 o'clock.

Sol. Gen. Where did you part?

Pryor. Directly over-against Brooks-market.

L. C. J. Where did you first see him?

Pryor. At Holborn, at Leather-lane end.

L. C. J. Where was the fire?

Pryor. Almost over-against the end of the lane.

L. C. J. What was he doing?

Pryor. Nothing; only stood to look on.

L. C. J. Then you went with him up Leather-lane?—*Pryor.* Yes.

L. C. J. Where did you part with him?

Pryor. At Brooks-market; we walked so far, and talked of drinking together; but when the mob were hallooing, and making such a noise, we did not go in to drink.

L. C. J. Where did you talk of going in to drink?

Pryor. He did not name any place, and I was a stranger there.

L. C. J. How came you to walk so far as Brooks-market?

Pryor. I do not know; we were talking of several things in the country.

L. C. J. How came you to be out so late?

Pryor. I had been carrying some glass to Westminster, and was going home again.

L. C. Baron. Did he give you any account of the fire in Holborn?

Pryor. He talked nothing of the fire.

L. C. Baron. How far was the fire from the end of the lane?

Pryor. Just at the end of it.

L. C. Baron. Did you see any thing of the fire?—*Pryor.* I did see it.

L. C. Baron. Did he say he had been there?

Pryor. No; but he said his lady sent him to see where it was.

Mr. Thomson. You said he was going home, and afterwards you say you went to Brooks-market; is that between Fetter-lane and Grevill-street, or is it beyond it?

Pryor. It is beyond it.

Mr. Thomson. How came he then to go beyond Grevill-street, in order to go home to his mistress?

Pryor. We were talking of country affairs.

Mr. Darnell. We shall call a witness to prove, that after Grove had been at Newgate to see the prisoner, he declared he did not believe him to be the same man.

Then *Stephen Fletcher* was sworn.

Mr. Darnell. Had you any discourse with Grove after he had seen the prisoner in Newgate?

Fletcher. When he came from Newgate on Good-Friday at night, and had been to see the prisoner, I asked him what he said to him? Nothing, says he; for he was not the man

that carried the curtain; for the man that carried the curtain had a green coat and brass buttons.

Att. Gen. Are you an acquaintance of Grove's?

Fletcher. Yes; I live in the same house.

Att. Gen. Was it Good-Friday at night, after he had been at Newgate, that he told you this?—*Fletcher.* Yes.

Att. Gen. Did you ask him any questions about the prisoner; or did he tell you of himself?

Fletcher. He told me he had been at Newgate to see Mrs. Miles's man: I asked if he said any thing? He said no; that is not the young man that I saw with the curtain.

Mr. *Darnell.* The account I have of Grove, is, that he was a tradesman, and broke, and now lives by gaming.

L. C. J. If you have any thing to examine to his reputation, you will do well to call your witnesses to it. Grove, what do you say to this?

Grove. When I came from Newgate, I thought it was the man; and I told him no such thing: I told every body I spoke with, that I believed it was the man.

L. C. J. Did you tell him that you believed the man that had the curtain was in a green coat?—*Grove.* No, not that night.

Mr. *Darnell.* Did you tell him so at any time?

Grove. Yes; but that was the Wednesday night; but when I went to Newgate, he had a blue coat; but I always believed him to be the same man.

L. C. J. Did he tell you he had a green coat on that night he had been at Newgate, or before?—*Fletcher.* It was before.

L. C. J. I understood you, that when he came back from Newgate, he told you he had nothing to say to this man, for that the man that had the curtain had a green coat and brass buttons?

Fletcher. He said he could not be positive, for that man had a green coat and brass buttons.

L. C. J. Did he tell you that night that he had a green coat and brass buttons?

Fletcher. I cannot tell whether it was that night.

Mr. *Darnell.* You say once he told you he had a green coat and brass buttons: what did he say when he came from Newgate?

Fletcher. He said he could not be positive, for that he had a blue coat on.

Just. *Tracy.* Did you, after you came from Newgate, say, you could not be positive he was the man?

Grove. I did tell him I could not be positive.

Mr. *Thomson.* Did you tell him you believed him to be the man?

Grove. Yes; I said I did believe it, but I would not swear it was he.

Then *Holgate* was sworn.

Mr. *Darnell.* We call him, to shew that at the fire there was a man in a green livery, who was very active there: pray tell us, was you at the fire in Holborn, and who did you observe there?

Holgate. My lord, about half an hour after ten I was at a neighbour's house, I heard there was a mob, and the meeting-houses were burning; upon that I went from thence, to my wife, and told her the meeting-houses were pulled down, and burning in Holborn; if you will go, I will see what they are doing. There I saw a great many boys bringing wood and boards, and throwing them into the fire: and at the fire I saw a footman in a green livery and red buttons, and red stockings; I saw him jumping, and very jolly. I will not be positive that he is our neighbour's footman that is since gone off, but I did see a footman in a green livery at the fire in Holborn, at Leather-lane end.

Mr. *Darnell.* What did you see him do?

Holgate. I saw him jumping and waving his hat.

Mr. *Darnell.* What sort of man was he?

Holgate. Much such a sort of man as the prisoner.

Mr. *Darnell.* Did you know the footman that is gone off?—*Holgate.* Yes.

Mr. *Darnell.* Did you see the prisoner at the fire?

Holgate. No; I am sure I should have known him, if I had seen him.

Mr. *Darnell.* Did you stay any time at the fire in Holborn?

Holgate. I did not stay two moments, but went up to Hatton-Garden, and there I saw a great many with their clubs and staves, crying out Sacheverell; one gave me a stroke on the head, and asked me, why I did not pull off my hat?

L. C. J. Why should you know the prisoner at the bar, if he had been there, and not know the man in green, who was your acquaintance too?

Holgate. My lord, I was at a distance.

L. C. J. Would not the same distance have hindered you from knowing the other?

Mr. *Darnell.* My lord, I desire to call a witness or two to the manner of life of this Grove.

Then *Thomas Clark* was sworn.

Mr. *Darnell.* Do you know Mr. Grove?

Clark. I have known him many years.

Mr. *Darnell.* What was he?

Clark. He kept a baker's shop.

Mr. *Darnell.* What became of him?

Clark. He broke.

Mr. *Darnell.* What became of him afterwards?

Clark. He went somewhere down to the water-side, to some place; but what it was I do not know.

Mr. *Darnell.* What does he do now?

Clark. I cannot tell; but they say he works with his uncle: I know nothing of him; but he never had a good character in his life.

Mr. Darnell. How does he employ himself?

Clark. He is given to playing, as I have heard say.

Mr. Darnell. Do you know any thing particularly?

Clark. No, indeed; I never took so much notice of him: but for the prisoner, I have known him two years, and never saw any hurt of him in my life.

Then *Ward* was sworn.

Mr. Darnell. Do you know this Grove?

Ward. Yes.

Mr. Darnell. What do you know of him?

Ward. He was a baker in Hatton-garden; I knew him several years: I know him to be a gamester.

Mr. Darnell. What instances can you give of his gaming?

Ward. He has played with me for one.

Mr. Darnell. How often?

Ward. Not very often.

Mr. Darnell. What do you know of his play? Does he live by it?

Ward. I cannot tell whether he lives by it or no; but he has been by relation a great gamester.

Mr. Darnell. Do you know of any body's servant that suffered by him?—*Ward.* No.

Mr. Darnell. What sort of games did he play at?—*Ward.* At dice.

Att. Gen. Do you reckon yourself a gamester?—*Ward.* No.

Att. Gen. Did you ever know that man play with any but yourself?

Ward. Yes, at the Bell tavern in Gray's-inn-lane.

Att. Gen. How often did you know him play there?—*Ward.* But once.

Att. Gen. How long ago was that?

Ward. I cannot tell how long; another time he played at our house in Hatton-garden.

Att. Gen. How long ago was that?

Ward. I cannot justly tell.

Mr. Darnell. Do you know the prisoner?

Ward. Yes.

Mr. Darnell. How long have you known him?—*Ward.* Two years.

Mr. Darnell. How has he behaved himself?

Ward. A very honest young man as can come into a house, by all relations that I ever heard of him.

Then *Farrington* was sworn.

Mr. Darnell. Do you know the prisoner?

Farrington. Yes.

Mr. Darnell. How long have you known him?

Farrington. I knew him when he lived in Chancery-lane.

Mr. Darnell. What do you know of his behaviour?

Farrington. A very civil young man; he used to fetch drink at my house: I never heard him swear, or knew him guilty of any ill.

Then Mr. *Miles* was sworn.

Mr. Darnell. Pray, Sir, what account do you give of the prisoner?

Miles. He has lived in our family two years: he has always behaved himself well, and soberly, and was addicted to no ill.

Sol. Gen. Was you at home that night?

Miles. No; I was out of town.

Sol. Gen. When did you return?

Miles. The Sunday following.

Mr. Darnell. My lord, we will not trouble your lordship with any more witnesses; we hope we have well accounted for the time he was out of his mistress's house, for that seems to be all that sticks upon him, that his being out so long might give room for him to be concerned in this tumult: but by the witnesses it appears, that the curiosity of seeing a mob, which he had never seen before, might take up some part of his time; and the two fires being so near, that he could not go from one, without seeing the other, engaged him to go to them both. There was a friend too that met him, with whom he walked up and down the street an hour; but we think it shews that he was not a ringleader, or aiding or assisting in pulling down the meeting houses, for that witness says, they were then carrying the materials, and the fire was lighting at the time when they were together; and that he parted with him, in order to go home, but his curiosity carried him to see that fire that was then lighting, that he might carry an account of it.

But upon the main question, we must humbly insist, that there is no evidence to fix it upon the prisoner. There are not two witnesses to any overt-act for the same treason, nor do those witnesses ascertain it to be the prisoner; for now it appears a little plainer, that his first charge was against a footman in a green livery: he declared it was a footman in green with brass buttons; and when he came to Newgate to see this man, he believes him to be the same man; that is the most of his evidence; but when he came home then to his companion, that he lived in the house with, he believed it was not the same man, and he could not swear it was the same man, because he had a blue coat; and now he would carry his belief so far as to believe, that he then had a blue coat, with black buttons; and surely, nobody could mistake a blue coat with black buttons, for a green coat with brass buttons: whatever may be supposed of the colour of blue by firelight, altering by that light towards a green, yet it cannot turn black buttons into brass ones.

Supposing the person whom Grove pretends to accuse were here, yet there are not two witnesses to an overt-act, for it is only confirmed by the confession which is proved by Lunt; but we hope the prisoner is not the person that had the colours, and therefore there is no evidence to make him guilty. We cannot differ from the resolution in the books in Messenger's case, much less with your lordship's resolution yesterday; but the case is entirely

different between the waterman and this man, for there it did appear that he carried the branch, and threw it into the fire; that from thence, he hallooed, and led a party, and offered to be their captain, to Drury-lane, and in that manner he took upon him to lead them, and did lead them; but there is not any one instance of that nature here, there is not any one witness that proves him to be in a meeting-house, or to have done any thing there, or to have gone from one to another. If he had joined with them at the first fire, and gone in with them in what they were doing, yet we must insist, that it would not make him guilty of high treason. In the case in king Charles the second's time, it was apparent they were all in the design; the verdict found that they assembled; that they armed themselves; that they chose a captain; that when the government thought fit to interpose to suppress them, they struck at the officer, threw stones at the captain of the guards, expressed their resolutions of going to Whitehall, and shewed what their intent was; but no design is proved against this man, and nothing to make it agree with that case: but those persons that were by all the judges acquitted from that treason; we think the evidence was much stronger against them, than what is offered against this man: for in the case of Beadle, he was proved to be among them; and when the officer pursued him, he turned about, and cried to the people to face about, and not to leave him: and though it appeared he was in the design, and called to the rest to resist in his defence, yet he was agreed not to be guilty of high treason, because he was not aiding in pulling down the houses; which in those matters wherein the judges gave their opinion, made it high treason: but as to Green in the first special verdict, and Beadle, they agreed, the verdict was not full enough to convict them.

L. C. J. The jury found the evidence, but did not find the fact which might have arose from that evidence; but if they had found, as the consequence of that evidence, that they were aiding and assisting, they would have been guilty. And though the court thought there was reason for the jury to have said so, yet they not having said it, the court could not say it for them.

Mr. *Darnell.* My lord, we say there is no intention proved against him, nor assisting in doing that which is the crime, in pulling down the second meeting-house: And as for the first, that was pulled down, and burning, before he came; so that he could not assist in that.

Willis. I desire Lunt may be asked, If he saw me carry any thing to the fire?

Lunt. I did not see him carry any thing.

Willis. Did he see any of the mob take notice of me?

Lunt. There was nobody with him, or that took notice of him: He went from the fire, after he had spoke those words, very quietly.

L. C. J. Victor, was you by Mr. Lunt when you saw the prisoner carry the timber?

Victor. He was within the shop, I believe.

L. C. J. You told us, that you saw several people in the meeting, breaking it down: Did you see the prisoner there?

Victor. No, I did not.

L. C. J. Pray, whence did he bring that timber that you saw upon his shoulders?

Victor. I cannot tell that.

L. C. J. You did not see him bring it out of the meeting house, did you?

Victor. No, I did not.

Sol. Gen. Mr. Lunt, was Victor by you when the prisoner spoke to you?

Lunt. He stood lower than me: We filled up the door-way: My hand was on the side of the door: Every now and then the mob would strike at me, as they went by, and were carrying the wood from the meeting to the fire; they would huzza, and cry, You dog, who are you for? Mr. Victor and I stood so about half an hour: I stood there before the fire was lighted, and till the guards came.

Sol. Gen. How often did you see the prisoner during that time?

Lunt. But once; and that was when he spoke those words to me.

Sol. Gen. Was Victor by you then?

Lunt. Yes; of the side of me.

Sol. Gen. Then set up Victor again. Pray Sir, about this timber: You say you saw him with some timber on his back; who was by at that time? Was Lunt by?

Victor. I do not know whether he was at the door, or in the shop.

Mr. *Thomson.* Was he coming that way from the meeting with the timber?

Victor. Yes.

Mr. *Darnell.* Can you take it on your oath, that the man that spoke to Mr. Lunt was the man that carried the timber?

Victor. No, I cannot.

Att. Gen. My lord, we think the proof is sufficient; and notwithstanding any thing that has been said by the counsel for the defendant, it stands unimpeached, and it is clear, that the prisoner is guilty of this treason. The evidence of both sides makes it appear, that upon this day there was an insurrection of the people, in order to pull down the meeting-houses, and that they executed their design by pulling down several at that time. Mr. Darnell does not deny but that, in point of law, all those people that were gathered together, to execute this design, are equally guilty of high-treason: So that the question is only, whether this prisoner was one of those people that were gathered together? That which he insists upon is, that though this man was there, yet no proof is made that he was aiding towards the carrying on this design; therefore we think what our witnesses say is consistent, and not impeached by what was said of the other side. The first witness that we called, though he was not acquainted with the prisoner, yet he says, there was a man in a blue livery, that was so remarkable in leading the mob, with a curtain on a pole, that he could not but take notice of it; and that when he

went to Newgate, to see the prisoner, he took him to be the same man that carried the colours; and though he cannot be so positive as to swear directly, yet he now believes it is the same man, though he cannot be positive. I am sure I should be very far from pressing any thing further than the nature of the evidence will bear: therefore I hope I do not misrepeat what he says: Therefore it leaves it somewhat uncertain, yet, whether the prisoner at the bar was the man that carried those colours? But that which puts this out of dispute, and makes it clear that this is the man, is Lunt's evidence, who now appears not to be an enemy to the prisoner: He tells you, that that night the prisoner told him, that they had made him captain of a party that night; that he had made colours of a curtain, and that we had burnt the clock. Now it is very strange, that if he was not concerned in carrying this curtain, that he should talk of a curtain and colours, and say, that he had made colours of a curtain. If he was not the man, it is unhappy that he should, within an hour after he was observed by our witnesses, say, that he was the man they had chosen; and that he had made a colours of a curtain; and that they had burnt the clock. It is not to be imagined he would have said such a thing, if he had not been the man that the others saw carrying it; therefore, putting these two witnesses together, (who are persons that no ways appear to be concerned to bring this man to justice more than any other) and it makes it plain and clear, that this is the man that flourished the colours. If so, then it is plain this is one evidence; and I agree, it is necessary that there should be another witness to prove some fact, and the testimony of one witness will not be enough, therefore we have produced Victor, that personally knew this man. He says, he saw him with a piece of timber on his shoulders; that he saw him throw it into the fire; and that he saw that man go afterwards and speak to Lunt, and Lunt told him who he was.

It is of consequence to all governments, to make every body, that is any ways aiding in these disorders, equally guilty; for it is impossible to tell who begins in these cases: You may know who carries on these things, but you cannot tell who begins them; therefore it will not be sufficient for them to rely on, that he was sent by his mistress at that time, for that is all that was proved, that he was sent out to see where the fire was, and his being sent out for that purpose will not make him the less guilty, if he did join with them, and aid them in what was done: For if men are met together to do an unlawful act, and those that do not know it join with them, they are guilty; therefore whether he knew of that meeting, or was only sent out by his mistress, yet if it is proved that he did join, and aid and assist those that were engaged in that treason, he is equally guilty. As to what was said by Prior, who was his companion, that appears to be just at his being sent out by his mistress to enquire: He told this man, that he was sent out to get intelligence, but you see, that though he was asked to stay and drink with this man, he would not, but left him, and what he did then, he could not tell; it is therefore likely that he afterwards went to this business that he was afterwards unhappily engaged in.

As to what they insist on, that they have called witnesses to invalidate the testimony of Grove, that he made some mistake about the colour of his clothes, that is no great matter to be relied on; for blue and green, by candle-light, are pretty much of the same cast, especially at a transient view; but you see the view he had was sufficient to know his face, but the light of the fire occasioned another cast upon his clothes, therefore his thinking it to be green when it was blue, will make no difference: and though he does not speak positively, but speaks with caution, and not as a man would do, that was prejudiced, and came to take away a man's life: though he says he cannot positively say this is the man, yet he says he does really think it is. As to the witnesses that prove he had a misfortune, and broke, that may be many an honest man's misfortune to fail in a way of trade: I do not see that they do impeach his credit at all: though they talk of his playing, I do not find but one man that has seen him play, and most people do some time or other: I do not find that he has swerved, or done any thing foul; but we must submit the matter of fact to the consideration of the jury: I believe the matter of law is agreed: I believe there was a notion in the world, that it was only a riot, for which they might be fined, and the like, but the law is now agreed; and as to the fact, we must submit it to your lordship's directions.

Sol. Gen. I think Mr. Darnell does agree, that if there was a general intention to pull down meeting-houses, it would be rebellion and high treason. I take it, that it was so, is as fully proved as is possible, by having so many pulled down, and by such a multitude of people as were got together for that purpose: for it cannot be thought, that the people that were at one house intended to pull down that, and those that were at the other houses intended to pull down them only; but it must be a general intention to pull down meeting-houses in general; we think, therefore, the general intention is proved, therefore what Tolboy says does not confine it: for though he says, what they declared was only in regard to Mr. Burgess's meeting-house, yet that does not take off from the evidence of what passed the next day, when the several meeting-houses were pulled down; and the fact, without that evidence, shews the particular intention; and the mob that were at Lincoln's-inn-fields, swore, Damn them, they would have them all down; and accordingly they went away to another, and pulled that down; therefore, that there was a general intention, is sufficiently proved, and that this man did act in that intention. We

this is sufficiently proved, that he was at the fire with them; but if it had been but one, it had been the same case. But they object, that this is not a legal evidence; for, say they, the statute restrains it, and says, that no confession can be given in evidence, and the evidence of Lunt, without it, will not do; and Grove's not swearing positively to the man, without the help of Lunt, will not be a legal evidence, so as to prove an overt-act. This is the strength of the objection in point of law, and God forbid that we should insist on any thing but what is legal evidence: it is justice to him, not to offer any such thing, as it is to the crown, to insist on what is legal evidence, to bring him to punishment. The words of the Act are, That no person shall be indicted, tried, or attainted of high treason, whereby corruption of blood may be made, or of misprision of such treason, but by the oaths and testimonies of two lawful witnesses, either both to the same overt-act, or one to one, and the other to another overt-act of the same treason, unless the party willingly, in open court, confess the same, &c. Now in this case, here are two lawful witnesses. Grove is a lawful witness, he is capable of being a witness; whether what he says is sufficient for the proof of the point, must be left to the consideration of the jury. If there are two legal witnesses, to which there are no legal objections, it is sufficient; whether what they swear is sufficient to prove the fact, is of another consideration; but there is not one word in the Act to restrain a confession from being given in evidence: he shall not be convicted on a trial, without two lawful witnesses; that is the thing that is provided for, and it was to exclude a precedent that had been settled in Tong's case, in my lord chief justice Keyling's Reports, an evidence of confession only, that was proved by two witnesses, and that was the occasion of making this law, that his confession alone should not be sufficient, without an overt-act. This was the reason and ground of making that Act of Parliament, but it was not designed to exclude all confessions. That was evidence at law, and always must be so: that evidence that comes out of a man's own mouth, was always allowed. The design of the Act was to exclude confessions from having the force of a conviction, unless it were in a court of record, and to prevent a confession proved by two witnesses, from being a sufficient ground for a conviction. A confession is a considerable evidence, and in many cases clears a thing beyond contradiction; and in this case it shews how necessary it is; for when things are transacted in the dark, and it is impossible for strangers to give a clear description of persons, surely the confession of a man himself is the most proper evidence in the world, and the most satisfactory. This then being a lawful evidence, it stands clear of that objection: here are two witnesses to the overt-act, and this evidence of Lunt is not excluded, but this confession of the party is lawful to be given in evidence.

This being the state of the matter, how stands it then? It is agreed he was at the bonfire in Holborn; he was sent out for that purpose: the fire was seen at his mistress's house, and he was sent out to enquire after the matter. That there was a man there in a blue livery, is proved by several people, and it is proved that he had a blue livery. Grove says he saw a man, he cannot tell whether he was in blue or green, with a standard in Holborn: he says, he does not know whether he was in blue or green, but he took him to be a man of that size, and he supposes him to be the man. But here is still a doubt, whether this is the man that carried the standard; and how is that cleared? Now this, with submission, is cleared by the man himself, if that be evidence, which we insist upon it it is. This declaration to Lunt, that he had made colours of a curtain, and that he was chose captain of a party, that does explain it, and is not answered by any thing they have offered to the contrary. As to his acting in the tumult in Leather-lane, Victor swears, that he saw him with a piece of timber on his shoulder, and that he carried it, and threw it into the fire. Lunt, as to every thing he speaks, is clear: he proves that he spoke some words to him; and as to what Victor says, he is as clear, that he had the wood and threw it in. The only question then will be, where he had this wood? whether he had the wood which he threw into the fire, made of the materials of the meeting-house, from any other place? They give you some evidence, that he was going home quietly; and that they parted about eleven at Brook's-market: but it is plain, he did not go home till just twelve, for so all the family agree; so that that time is to be accounted for, which he might have spent at this bonfire, and in this tumult. There is another man to answer the business of what they call the High Church standard: he says, there was a man in a green livery which he saw, and thought he knew him, but could not be positive, because he was at a distance; but if it had been this man, he believes he should have known him; but there is as little reason for him to know the one as the other. The man in the green livery, he says, is run away, but he says nothing as to the brass buttons; and it is easy to mistake between green and blue.

I shall not urge the evidence further than it is reasonable; these are circumstances which will be under the consideration of the jury. But supposing the man to be concerned in this manner, acting as the queen's evidence have proved, it will be high treason within the case in my lord Keyling's Reports, and is not distinguished by what Mr. Darnell offered. He says, there was leading and arming, and they struck at the guards; so here was leading, for nobody denies but they had a standard: the only question is, whether the prisoner carried it? and in the other mob in Lincoln's-inn-fields, they were led, and hallooed away to Drury-lane. And as to the Case of Beadle, which he would compare it to, there was no act that was done by him; besides, the verdict was defec-

tive, in not finding the aiding and assisting; for though they found the facts, yet they did not draw the conclusion from those facts. As to what has been said to the reputation of Grove, I do not find it any ways affects him; it is not proved that he has cheated, or that he is a common gamester, or that he lives by that way. As to the reputation of the prisoner, there may be many honest men that might think they did service at this time, and he might be desired among the rest; but that is no argument why he should not be concerned in the fact: whether he was or not, is what we must submit to the consideration of the jury.

Mr. *Thomson.* My lord, as to the matter of law, it has been fully spoken to, and that the intention was general, is proved; the only question is, whether the prisoner was aiding, and so proved in a legal manner? I will only state how each overt-act is proved: the first act is his going with a piece of wood on his shoulder, and throwing it into the fire; that Victor swears positively. I asked, whether he was coming with it as from the meeting-house? and he said he was: as to that, it is plainly sworn upon him as to the man.

The other overt-act is from Grove; there is indeed some uncertainty as to the person, Grove was not indeed very positive; he did observe a man at the fire; he could not say whether he had on a blue livery or green; but when he went to Newgate to see the prisoner, he did say he believed him to be the man. Indeed they pretend that he said something contrary to his companion; but all he said then was, that he could not be positive, but he did say, he believed him to be the man. Now there being this uncertainty, what do we call Lunt to his confession of? If we call him to prove the overt-act by his confession only, there might be some colour to object to it: but the fact is proved to be done by Grove, and we call Lunt only as to the identity of the person. He only explains what Grove had sworn before: he swore the colours were displayed, and the confession is only as to the identity of the person. As to the reputation of Grove, they did endeavour to asperse him, but I think they could not make any thing out: they do not pretend to prove any malice in him; nay, he is the rather to be credited, because he will not be positive. If he had had any malice, he would have sworn positively, but you see he will not be positive.

Something was mentioned that there was a man in a green livery there, from whence they would infer, that he was the man that was thus instrumental, and that it was not the man in the blue livery; but that cannot be he, because he had red buttons and red stockings; so that that seems not to have much in it. They pretend to account for him as if he was not there, when Pryor says he met him at eleven, but he did not go home till twelve: so that we think having thus proved by Victor positively, by Grove thus circumstantiated in this manner; the man's confession coming afterwards by Lunt, which declares him to be the man that did the fact, we think it brings it home to the prisoner. But we submit it to your lordship and the jury.

Mr. *Darnell.* My lord, as to the matter of the confession, I think what Mr. Solicitor General says, by way of answer, will lay aside the statute of king William, for it is, in effect, to say, that if the two witnesses to an overt-act are uncertain as to the person, his confession must fix it upon him. If two witnesses will swear that a man in a blue coat did commit high treason, but are uncertain as to the man, it shall be brought home to any man in a blue coat, if he shall come and say that he did the fact; so that the confession is entirely the evidence, for the other evidence could not convict him without it.

L. C. J. Do you apprehend that Grove's evidence is not to be considered by the jury? Is it only, that some man or other did display the colours? Does not his evidence go further? He says he went to see the man in Newgate, and he believes, that man that he saw there was the same: now how far that will weigh with the jury, is of another consideration: and as to the case of Beadle the fact was found there, but the jury not finding that he was aiding and assisting, the court could not supply it for them.

L. C. Baron. You have laid a stress upon that which is found in the special verdict. See what the judgment of the judges was. But as to Green in the first special verdict, and Beadle in the third special verdict, we all agreed, that the verdict was not full enough, as to them, for us to judge it treason in them, because the verdict only finds that they were present, and finds no particular act of force committed by them; and doth not find that they were aiding and assisting to the rest: and it is possible one may be present among such a rabble, only out of curiosity to see, and whether they were aiding and assisting is matter of fact, which ought to be expressly found by the jury, and not be left to us, upon any colourable implication; and accordingly those two were discharged.

L. C. J. Gentlemen of the jury, Francis Willis, the prisoner at the bar, stands indicted before you, for that he, upon the first day of March last, with a great number of others, did levy public war against her majesty. The proof that has been offered by Mr. Attorney, and the counsel for the queen, has tended to shew, that there was a general design of pulling down all the meeting-houses; and that this prisoner did assist in it, did carry colours in it, and did other acts that gave assistance in it: this is what they proposed to make out against him.

The evidence was first Tolboy, who says, that the day before he was going through the Temple, and there was a great mob that attended Dr. Sacheverell from his trial, and among them he heard a discourse of pulling

down Mr. Burgess's meeting-house; he heard no other mentioned; some were for pulling it down then; others were for leaving it till the next night, and others till the event of Dr. Sacheverell's trial. What determination they came to, he does not know, for he went away; so that his evidence goes no further than proving a design to pull down one meeting-house.

The next witness is Grove; he gives an account of two meeting-houses pulled down, and fires made from the materials, one in Holborn, the other in Hatton-garden; that at that fire in Holborn, he saw a man with a curtain on a pole, and he called it High-Church standard, and was active among the people; stopt coaches, and got money from those that were in them, and made them cry out as he did. As for the person, he cannot say the prisoner is he. He says he took notice of him, he was in a livery; and that he went to Newgate, and saw one, who, he cannot be positive, but he believes to be the same that he saw carrying the curtain: but whether it is the prisoner at the bar, that he cannot say: for he says he has not the same clothes, nor wig on, and that makes him doubtful. Being asked, what colour his coat was, he is not sure whether it was blue or green; but he said, he rather believed it was blue.

This not being enough to bring it home to the prisoner, they call another witness, who was Hill, who shewed him the prisoner: and they brought Cubwidge, who went with him; and they tell you, that the man they shewed to him in Newgate, was the prisoner at the bar; and these being laid together, it amounts to the same thing as if he had sworn against the prisoner, as he did against the man in Newgate; that is, that he believed him to be the same person that carried the colours.

The next is Victor; he says, that after the fire at Holborn, they came to Leather-lane; that they got into the meeting-house there, and worked hard to pull it down, but he does not say the prisoner was in the meeting-house: but the fire they made was in Hatton-garden, and there he saw the prisoner carrying a piece of wood, and throwing it into the fire, and making an huzza. He does not say where he had that wood; he does not say that he saw him bring it out of the meeting-house, and he did not know him at that time, but he kept his eye upon him; and not long after, he came by Mr. Lunt's door, and the prisoner spoke to Lunt: what he said, he cannot tell, but he asked Lunt if he knew him; Lunt told him he did; and when he was come so near, he does take upon him to say, that he remembers his face, and he takes him to be the same person. He was asked as to his features, but he does not go about to distinguish them; and it is difficult for a man to describe those particulars, by which a man distinguishes one from another.

Then Lunt is called, and he confirms, that the prisoner was at the fire at the same time that Victor was at his door; that it was eleven at night; and that the prisoner spoke to him; that his boy asked him, What, Frank, are you one of them? And thereupon he said, They have made me a captain of a party; I took a window-curtain, and made it colours; and we burnt the clock. This they would apply to clear that which Grove speaks a little more doubtfully, when he says only, that he believes him to be the same person as he saw in Newgate.

The next witness is Orrel, and he cannot charge any thing upon the prisoner, but gives an account of the pulling down the several meeting-houses, and the several mobs that were in Lincoln's-inn-fields, Drury-lane, Holborn, and Black-friars, and their making general declarations, that they would have them all down. And thus far his evidence is material, that there was a design to pull them all down; it was publicly declared, and put in execution, as far as they had time. Actions declare the intentions; for when it breaks out into action, then the design appears. He said something further, which is, that he saw a footman in a blue livery, that was busy at the fire, and encouraging the people to throw the wood in. He says he was a well-made man, much of the size of the prisoner. This is the evidence produced against the prisoner; and upon that you will take notice it is made out, that there was a general design put in execution, of pulling down the meeting-houses; and that he was at one fire in Hatton Garden; and there is only the belief of the witness so strengthened as to his being at the other.

On the other hand, the prisoner in his Defence tells you, that he is servant to a gentlewoman in Grevill-street; that the family being going to bed about ten o'clock, and seeing a light in the street, ordered him to see what was the matter: This was after the clock had struck ten. He went into Holborn, and saw the fire; but as he pretends, did not come near it; and then he came back to his mistress's house; and so they insist, that they have given an account of the whole time he was out. The first witness they produced was Mrs. Brisco, who was the daughter of his mistress; she tells you the occasion of sending him out; that she observed a light, and directed him to go; and tells you the time, that he came back before the clock had struck twelve; and that she did express her anger for his staying so long. Mrs. Miles confirms the same; and being asked what account he gave when he came back, both they and the maids say, he gave no account of the fire; but she hearing that Lunt had something to say against him, and taking notice that he was dejected, asked him, If he had done any thing? And he said, Nothing to harm him. Hodges speaks of his going out, but not of his returning. Elliot says, she let him in, but did not hear him say any thing at all about the fire; but she says he was in a blue livery. Then they call Pryor, and he tells you, he was coming from Westminster to Clerkenwell, he saw the fire in Holborn, and at the end of Leather-lane he saw the prisoner looking on, but

doing nothing, none of the mob with him; that the prisoner and he walked along Leather-lane, and it was proposed, that they should drink together, but they walking together, observed a fire making in Hatton-garden; that they walked by the street where his mistress lived, as far as Brooks-market, and there they parted, and the prisoner turned towards his mistress's house, and, as he thought, went home. Then they produce Fletcher, and he speaks as to Grove's evidence: And to take off from that credit that otherwise his testimony would have, he says, that Good Friday, at night, he told him the prisoner was not the man, for the person he saw had a green livery, and brass buttons; so he said at first: but upon enquiry a little more particularly, he did not tell him at that time that it was a green livery, but some time before: And Grove being called again, does own the same; and that he said he could not be positive, and that is what he now says, and only says, he believes him to be the same, and that he told the witness so at that time. Holgate says, that about half an hour after ten he heard of the mob, and went to see it; that he went to the fire in Holborn, and there he saw a footman in green, but he had red buttons, and the prisoner's livery was blue trimmed with black, and black buttons: But he says he saw a footman there in green, which is offered, to let you see that there might be another person that Grove did really see. Then Clark is brought to give some account of Grove; he says he kept a shop, and broke, and never had a very good character. Ward says the same; and that he was a gamester; and that it was reported he used to get his living that way: And he tells you, the prisoner is of a good reputation; and those of the family say as much of him.

This is the substance of the evidence on both sides. The use that the counsel for the prisoner would make of their evidence, is first, to shew that they have given an account of his time; that he was otherwise employed than in the manner the witnesses for the queen have given an account of. Now it is certain, they have not; for they give an account only of a walk from Holborn to Brooks-market, whereas his own witnesses say he was out at least an hour and an half, so that there was time enough for him to be there: And though that witness saw him going homeward, and not to the fire, yet it is certain, he did not go home then, and that he was at the fire, because two witnesses swear he was at the fire; and it does appear that he was at both the fires. Before I state that, give me leave to say, that there is a full proof of a general design put in execution, of pulling down the meeting-houses, so any one that is aiding in that, is guilty of high-treason, though he were not privy to the first design; for in high-treason there is no such thing as accessary; all that are actors are equally guilty, and that was the case of the lord Essex: He went with some forces to remove some evil counsellors, and came to the city to desire assistance; some forces he had assembled in his own house; others joined him in the city; it was adjudged they were all guilty of high-treason, though they did not know of his design; and those that were accidentally there, and did depart, it was said, were entitled to her majesty's grace; but it is not said they were Not Guilty. So was the Case of the Bawdy-houses; yet it is not said, that any of them were the persons that formed the design of pulling them down.

You are therefore to consider, that it is not enough to charge the prisoner, that he was at the two fires: It is not enough that there was time for him to do what he is charged with, but you are to consider what is proved on him that he did. You observe what is objected as to Grove, that there is a great uncertainty as to his evidence, and that his credit is not fair: He does not charge the prisoner positively, nor ever did. He differed as to the colour of his cloaths: And though it is rightly observed, that blue and green are not easily distinguished by the light of the fire, yet that is not the objection; the objection is, that the witness at first declared, he believed it to be green, and now he has told you, that he believes it to be blue, and that is not consistent, and does therefore a little concern his credit in this matter, that he has changed his evidence. Then they say, that he did not see him at the meeting-house: He saw somebody carrying colours, and believes this to be the man; but he says, he was not near enough to distinguish his cloaths, so he might not be able to distinguish his face. But then they bring some witnesses to shew he is not a man of so clear a credit, but they do not charge any great matter upon him. As for his having broke, that may be a misfortune that may attend any man: But then they would support this by the confession he made to Lunt, who swears, that he said he made colours of a curtain. Now that may seem to give some colour to it; but I ought to take notice of the other part of his confession, that they had made him captain of a party, which does not appear to be likely; for as he was moving from one party to another, it would be very natural for the captain to have his mob with him, but it is plain he was unattended in going from one fire to another. When he was at that fire in Hatton-garden, he went away alone, as Lunt says: And they do not say that he did encourage the mob. He did throw down a piece of wood, and huzza, but he did not much encourage others. As to the piece of wood, one of the witnesses did not see it, and the other that did see it, did not see him in the meeting-house; so that it is not proved he was at either of the meeting-houses, though he was at the fires. And you may consider another circumstance, and that is, that this witness, Victor, did not know him before, nor did he know what cloaths he had on; and if he had not come nearer to him, to Lunt's door, in probability, he had not known him again; but he says, he saw him throw a piece of wood into the fire;

and he says he kept his eye upon that man, and saw him come up, and speak to Lunt. Now you will consider, whether such a man might not, in a crowd, slip out of his eye, and he might take another for him; for Lunt, that knew him, says, he did not see him have any timber at all.

These are the observations that, I apprehend, may be most proper for me to make to you. As for the law, if you take it that he is the man that had the colours in Holborn, and afterwards came to the other fire, and threw the piece of timber in there, he is undoubtedly guilty of high treason: Therefore you must consider, first, how far you believe he is the same that carried the colours in Holborn, and how far you take him to be concerned in pulling down the meeting-house in Leather-lane. I should take notice of another thing, that there was a footman in green, at the fire in Holborn, who was very active; and that man could not mistake the colour of blue and green, because he knew the prisoner: Now that being so, it does appear there was a footman in blue, and another in green, that was active at the fire in Holborn, and one of these two, perhaps, had the colours; the question is which? Grove first says, the man that had the colours was in green, and then he says he was in blue. Now if the first be right, that he was in green, it does appear there was such an one in green: If you believe he was the person that did make use of these colours, and that he was assisting in pulling down the meeting-house in Hatton-garden, then you are to find him guilty: If you think he was not the person, you will acquit him.

Then the Jury withdrew, and the Court adjourned till five o'clock, when the Jury brought in their verdict.

Cl. of Arr. Francis Willis, hold up thy hand. Look upon the prisoner: How say you? Is he Guilty of the high treason whereof he stands indicted, or Not Guilty?

Foreman. Not Guilty.

Cl. of Arr. Did he fly for it?

Foreman. Not that we know of.

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445. The Trial of GEORGE PURCHASE, at the Sessions House in the Old-Bailey, for High Treason, in levying War against her Majesty, in the Kingdom, under Pretence of pulling down Meeting-Houses: 9 ANNE, A. D. 1710*.

DOMINA REGINA *versus* PURCHASE.

Die Sabbati Vicesimo Primo die Aprilis Anno Dominæ et Reginæ predicto.

THE Court being resumed, as in the trial of Francis Willis, and the same judges being present,

Cl. of Arr. Middlesex Cryer, make proclamation.

Cryer. O Yes, O Yes; you good men of the county of Middlesex, summoned to appear here this day, to try between our sovereign lady the queen, and the prisoners that shall be at the bar, answer to your names as you shall be called, every man at the first call, upon pain and peril shall fall thereon.

Then the Jury that were returned on the pannel were all called over, and the appearances of all those that answered to the call were recorded.

Cl. of Arr. Set George Purchase to the bar. (Which was done.)

Cl. of Arr. George Purchase, hold up thy hand. (Which he did.)

Cl. of Arr. You the prisoner at the bar, these good men, whom you shall hear called, and do now personally appear, are to pass between our sovereign lady the queen and you, upon trial of your life and death. If therefore you will challenge them, or any of them, your time is to speak to them as they come to the book to be sworn, and before they be sworn.

Cl. of Arr. Thomas Sutton, esq. (Who appeared.)—Hold Mr. Sutton the book.—You shall well and truly try, and true deliverance make between our sovereign lady the queen, and the prisoner at the bar, whom you shall have in charge, and a true verdict give according to your evidence. So help you God.

Cl. of Arr. John Furness. (He appeared, and was sworn.)

In like manner the other ten gentlemen appeared, and were sworn, whose names follow:

JURY.

Thomas Sutton, esq.	Edward Boswell,
John Furness,	Robert Breakspear,
John Parsons,	Richard Beatknife,
Joseph Parsons,	Richard Hazzard,
William Hargrave,	Francis Higgins,
John Meard,	Humphry Newman.

Cl. of Arr. Cryer, count these.—Thomas Sutton.

Cryer. One, and so of the rest.

Cl. of Arr. Humphry Newman.

Cryer. Twelve, good men and true, stand together, and hear your evidence. Are you all sworn, gentlemen?

Cl. of Arr. Cryer, make proclamation.

Cryer. O Yes; if any one can inform my lords the queen's justices, the queen's serjeant,

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* See the two preceding Cases.

the queen's attorney-general, or this inquest now to be taken, of the high-treason of which the prisoner at the bar stands indicted, let them come forth, and they shall be heard, for now the prisoner stands at the bar upon his deliverance; and all others that are bound by recognizance to give evidence against the prisoner at the bar, let them come forth, and give their evidence, or else they forfeit their recognizance. And all jurymen of Middlesex that have appeared, and are not sworn, may depart the court.

Cl. of Arr. George Purchase, hold up thy hand. (Which he did.)—Gentlemen of the jury, look upon the prisoner, and hearken to his cause. He stands indicted by the name of George Purchase, late of the parish of St. Andrew Holborn, in the county of Middlesex, labourer, for that he not having the fear of God before his eyes, but being moved and seduced by the instigation of the devil, &c. (*prout* in the indictment, *mutatis mutandis*,) against the peace of our sovereign lady the queen, her crown and dignity, and against the form of the statute in that case made and provided. Upon this indictment he has been arraigned, and thereunto hath pleaded Not Guilty, and for his trial hath put himself upon God and his country, which country you are. Your charge is to enquire whether he be Guilty of the high treason whereof he stands indicted, in manner and form as he stands indicted, or Not Guilty. If you find him Guilty, you are to enquire what goods and chattels, lands and tenements he had at the time of the high treason committed, or at any time sithence. If you find him Not Guilty, you are to enquire whether he fled for it: If you find that he fled for it, you are to enquire of his goods and chattels, lands and tenements, as if you had found him Guilty. If you find him Not Guilty, nor that he fled for it, you are to say so, and no more, and hear your evidence.

Mr. *Thomson.* May it please your lordship, and you gentlemen of the jury, George Purchase, the prisoner at the bar, stands indicted, for that he, not having the fear of God before his eyes, but being moved by the instigation of the devil, and designing to withdraw the cordial love and natural obedience, which true and faithful subjects of our sovereign lady the queen do and ought to bear towards her, and intending to disturb the peace and common tranquillity of this kingdom, on the 1st of March last, in the parish of St. Clement Danes, in the county of Middlesex, traitorously compassed and imagined to levy war, and stir up rebellion and insurrection against our said lady the queen within this kingdom: and that he might accomplish his said traitorous imaginations and designs, on the said 1st of March, and in the said parish being assembled, with a multitude and great number of people, armed and arrayed in a warlike manner, he did then and there unlawfully and traitorously levy war against our said lady the queen, contrary to the duty of his allegiance, against the peace of our said lady the queen her crown and dignity. —To this indictment he has pleaded Not Guilty. —Gentlemen, we shall call the evidence for the queen, and if they prove the charge, as laid in the indictment, we doubt not but you will find him Guilty.

Att. Gen. (Sir James Montagu.) My lord, the prisoner at the bar stands charged with an indictment of high-treason. The species of high-treason has been opened by the gentleman that opened the record: we shall prove it by calling witnesses to shew that he was one of those wicked persons that did assemble themselves in Drury-lane: we shall shew, that this rebellious assembly was got together to do right, as they called, to a gentleman who was under a prosecution of the House of Commons; his name is known, I mean Dr. Sacheverell;* they resolved, that to do him justice, they would be revenged on the meeting-houses of the Dissenters, and therefore they resolved to pull them all down: that this design was framed in that assembly that used to attend Dr. Sacheverell to and from his trial; it was there resolved to pull down the meeting-houses in and about the city: that in pursuance of that design, they did meet in several places in this county, and the city: that the prisoner was among those that assembled in Drury-lane; that he was with his sword drawn; that when the guards were come (for they were too many to be withstood by the civil government) the constables and watch were too few to withstand that assembly, therefore it was necessary, for the preservation of all honest men's lives and estates, for to send the guards to suppress this tumult; and it was great grace in her majesty to have that regard to her people. When they came, they used them with more tenderness than they need have done; they spoke to this man to put up his sword, and be gone: No, he came with a resolution, and till that was done, he would not put it up. They came the second time, and asked him, do you know that you are resisting authority, in opposing the queen's guards? You are opposing the queen's person, therefore pray begone: No, he persisted in it, and had the courage, or impudence, to assault the officer that was at the head of the guards, and would have killed him, if one of the guards had not, by a lucky stroke, beat his sword down. He was so devoted to the cause, that he declared he would lose his life in the cause; and what was this cause? It was opposing a just and necessary prosecution, that was carrying on by the Commons of England, before the greatest court in England, and, perhaps, in Europe; and they thought fit to find him guilty of the charge that was laid against him. This gave these people occasion to exercise their revenge on all the meeting-houses. We have had the determination of the court oftentimes, that this is levying war within the statute of 25 Edw. 3. When we have made this appear, we do not doubt but the jury will find him Guilty.

* See his Case in the present Volume, p. 1.

Sol. Gen. (Robert Eyre, esq.) My lord, we will call our witnesses, and prove the facts.

Then *Thomas Tolboy* was sworn.

Att. Gen. Pray give an account if you saw any tumult, or number of people that attended Dr. Sacheverell; and what discourse you heard among them; and what resolution they came to.

Tolboy. As I was passing through the Temple on Tuesday night, I saw a great number of people that attended him: I there heard them resolve upon demolishing Mr. Burgess's meeting; some were for doing it then; others for leaving it till the next night.

Att. Gen. What night was this?

Tolboy. It was the Tuesday night.

Att. Gen. Was it before the 1st of March?

Tolboy. Yes it was.

Att. Gen. Was it resolved by more than one?

Tolboy. By a great many.

Att. Gen. Then you take it to be general?

Tolboy. Yes.

Purchase. Did you see me there?

Tolboy. No.

L. C. J. (Parker) Did you stay there any time?

Tolboy. No; I only heard them discourse of it as I passed along.

Baron *Bury.* Did you stay till they came to a resolution? Or were they only talking of it?

Tolboy. They came to that resolution then.

Baron *Bury.* Did you stay till they were agreed upon it?

Tolboy. It was agreed to pull down the meeting-houses, though the time was not fixed.

Baron *Bury.* Did you know any of them that this was agreed by?

Tolboy. No, none of them.

Baron *Bury.* What did you hear them say?

Tolboy. I heard them resolve on demolishing Mr. Burgess's meeting. Say they, Come boys, we will demolish Dr. Burgess's meeting; others said, No, we will defer it to the end of the trial.

Then *William Orrel* was sworn.

Orrel. My lord, before I give my evidence, I beg leave to speak a few words. Purchase's wife has been in my neighbourhood, and offered money to several people to come and swear against me, to take away my reputation: and yesterday a person came into Mr. Leonard's coffee-house, and said publicly, that I was perjured; that when I swore against Willis I was perjured; that the jury would not believe me; and that I was reprimanded by the court and the queen's counsel. My lord, I desire I may clear myself.

Att. Gen. There is an information laid before me, which I shall take notice of in a proper place; for it is an intolerable thing, in any government, that when we are proceeding in a judicial way; that when people have the benefit of the law that was made for them, a copy of the indictment and of the pannel, liberty to examine witnesses, and ask what questions they think proper; and they cannot say, but that there has been a tenderness in us, that are the prosecutors, not to press things further than the natural import of them; yet that such practices should be used to discourage the queen's evidence. I have an account, that John Roberts, a mathematical instrument-maker, has, at Leonard's coffee-house, affirmed, that the queen's witness was a perjured, forsworn villain, in giving his evidence here. I shall, in a proper time, endeavour to bring him to justice for it.

L. C. J. It was not improper for him to mention it here. I was so far from reproving him, or thinking his evidence false, that I never heard a man give a fairer or better evidence; and no one witness at either trial opposed one word he said.

Att. Gen. Mr. Orrel, pray consider you are now upon your oath; therefore, without regard to threats, you must speak the truth, and God forbid you should be afraid of it.

Sol. Gen. Was you abroad on Wednesday the 1st of March? What did you observe of the pulling down any meeting-houses? Give an account of all the places you were at, and what concern the prisoner had in it.

Orrel. About ten o'clock, or a little before, I went to Leonard's coffee-house, and hearing that they were pulling down several meeting-houses, I went with another gentleman, Mr. Hawkins, directly to Fetter-lane: when I came there, I saw abundance of people, a great mob, carrying the materials from Mr. Bradbury's meeting-house into Holborn. I asked the people where they carried them? They all said to Holborn. When I had stood there a little time, says I to my friend, let us go into the meeting-house; I will see; it may be, I may know somebody there. I went through a dark passage, and narrow entry: when I came in, Lord have mercy upon me, said I, it is all down: I turned back to my friend, Mr. Hawkins; this is destroyed, said I, let us go see where they burn it. We went to Holborn, and all the way we saw abundance carrying wood quite from the meeting-house to the fire in Holborn. We made no stay at the fire, but immediately went through Turnstile, and down by Lincoln's-inn garden-wall, to the fire there, which was made of Mr. Burgess's meeting-house, which I had been in two hours before, and saw them pulling it down. When we had been there a little while, I said to my friend, let us go towards the other part of the town, and see what is doing there. We went along that side of Lincoln's-inn-fields, where Mr. Child's house is: when we came to the corner, by my lord chancellor's, at my lord's door, there stood a chariot; said I, I believe there is somebody from court, I hope there will be a power, by-and-bye we shall have the guards. We made no halt there, but went softly towards the arch: before we came to it, I saw a pretty tall man leading a body of the mob through the fields; about the middle they made a halt, and be-

came a bigger number; we walked softly to meet them: I kept my eye on the tall man, which proved to be Dammaree: some of them were for going up Queen-street, and some were for going through the arch. When they came near the corner, he struck short off, and went over the rails just under the wall, about the middle way between Powis house and the arch, and there they called a council: says I, there is a council of mob; there I saw Dammaree. Said they, where shall we go to now? To Drury-lane, or Wild-street? No, said some, to Drury-lane, huzza! Wild-street is a hen-roost, the other is worth ten of it. Dammaree hallooed, Come along, boys, we will have them all down, and they carried it by the majority. I went under the piazzas at Powis house, into Queen-street: when he was in Queen-street, he made ten or twelve halts, and turned about, Huzza! High Church and Sacheverell! God damn all his enemies; we will have all the meetings down to-night; follow me; why don't you come along? And this he many times repeated; and thus he headed them until he came to Drury-lane; there some of the boys ran to find the meeting-house door, but they missed the door, and went to some of the neighbours' houses; but they soon found out the door, and there came a little fellow, with a pick-ax, to break down the door. A woman that belonged to the place came crying, that her sister was in the house, and would be killed: do not be afraid, mistress, said I, I will endeavour to pacify them, if I can: but at last came another man with a hatchet, and struck through the door the second or third time. God damn you, says he, don't you know how to break down a meeting-house door? That fellow cannot be found. I went in with them, and there I was assaulted by a soldier; and when I was there, they would have me go up stairs with them. Pray, says I, do not go up, there is only a poor woman's room, that belongs to the place. What will it signify, if you should burn an old bedstead? God damn you, says he, are you against Sacheverell? Says I, I have the queen's commission: upon that he cries out, The Church, the Church; God damn you, you shall go up. That man, I suppose was a soldier; he was in a looped waistcoat and white stockings. I went up with them, and it proved to be Mr. Earl's own lodging; and there they took up a great many papers, manuscripts, which I suppose might be notes. As soon as I came out, I saw the clock and the cushion thrown down into the kennel, in Drury-lane; and they were the two first things that were brought out, as I observed. I asked, indeed, why they began to complain, and give me ill language? Says I, where is Jolly, the waterman? Oh damn you, says one, he is gone with a party to St. James's: another said he was gone to my lord Wharton's; and others said, he was gone to the back-door to break it open; but I saw him no more after that. When I came out, I went to the man that keeps the Griffin and Parrot, and told him, I was sorry to see these things; and my friend went to his brother's house, which was hard by. After my friend was come again, well, said I, I will go into the city, to Leonard's-coffee-house, and give an account to our friends of what has happened, for they will stay for us, and will not go to bed, if I do not go back to night. We agreed to go home; but my friend asked, where was the meeting-house in Wild-street? Says I, I know Wild-street; says he, I believe it was the old mass-house: so we went through Wild-street; and as we came to the arch, we met a detachment of the guard coming on a full trot. Says I, gentlemen, pray make haste, they are pulling down the meeting in Drury-lane. I put out my hand to the captain, this is the best way, said I, through Wild-street: and another detachment went another way. As soon as they came (I was near the officer), he commanded them to file off, and disperse the mob; and they rode among them to disperse them. While I was there, I saw a man with his sword drawn, near the Griffin and Parrot, who was the prisoner at the bar: I went over the way, and spoke to him.

Purchase. What time of night was this?

Orrel. It was about half an hour after eleven. Several of the horse rode up to him, and then he retired under the bulk, and pushed with his sword at several of them; and some of them struck at him with the flats of their swords. Says I to my friend, I wonder they don't cut him to pieces. I went to him; pray, says I, what are you doing? Pray go home. He turned his back, and I thought he had been gone. In a minute's time, the Guards had rode round the fire, and dispersed the mob a little: in a minute or two, I saw the prisoner with his sword drawn, hallooing and flourishing his sword in the middle of the street, just by the kenhel in Drury-lane, and fronting the Guards. I came to him, and laid my hands upon him, and pushed him back, what are you doing? Two foot-soldiers came to me, and said, what do you do? He is drunk; he is an honest gentleman: says I, take him away then, if he is your friend. Says I to him, do you know what you do, in opposing the Guards? You oppose the queen's person. Says he, God damn you, are you against Sacheverell? I am for High Church; I will be for High Church and Sacheverell; I will lose my life in the cause; and this many times repeated. I went over the way, and he advanced with his sword, and run at the officer, just at the left flank: at that I saw a gentleman's horse spring forward, and he struck his sword down. I went back, thinking there would then be firing, and I might be killed.

L. C. J. Pray repeat the words again, which he spoke to you, when you told him, that resisting the Guards was opposing the queen.

Orrel. I said, Sir, (I thought he was some country gentleman, and that he was in drink)

Do you know what you do in opposing the guards? You oppose the queen's person; I spoke it heartily and in friendship, I had my hand on his breast, and he had his sword in his hand; says he, God damn you, are you against Sacheverell? I am for High-Church and Sacheverell, God damn all his enemies; I will lose my life in the cause; I will fight the best of them; and advanced and huzzaed; Boys, I will lead you on for High-Church and Sacheverell. After this was over, as I observed, he run at the officer: if he had touched him, I believe he would have run him through the left flank. One of the gentlemen of the guards, I saw his horse spring forward; he reached over his horse, and struck at the prisoner's sword; and then I retired, and went lower into the lane; for I thought if there was firing I should be in danger.

Sol. Gen. Before you go from this place, where he flourished his sword, let me ask you, did he advance towards the guards, or did they advance towards him?

Orrel. As soon as that gentleman had sprung forward, and struck at his sword, he endeavoured to shelter himself under the bulk, and one or two of them rode up to him.

Sol. Gen. Did he retire under the bulk, after he had passed on the officer?

Orrel. This was a second time, when he passed at the officer: he passed at the grenadiers before, but these were the life-guards.

Sol. Gen. You say he run at the officer?

Orrel. As I run over the way to him, he said, God damn them, he would lose his life for the cause; he was for High-Church and Sacheverell; Damn all his enemies, he would fight the best of them. Come, boys, fall on, I will lead you on; and flourished his sword over his head, and went directly at the officer, and made a push at him, but his sword was beat down.

Sol. Gen. Now go on.

Orrel. After this I retired, I never staid to see what was done with him; I thought they had either killed him, or confined him: I thought there was like to be an engagement between the mob and the guards, so I retired down the lane, and there I met with a clergyman at a tavern door, and I stood and talked with him, till the foot-guards came by: says I, Captain, the mob is very strong, I wish you good success. As the mob went by, they cried, Damn them, we will be even with them to-morrow night, they dare not fire upon us.

Att. Gen. If you will ask him any questions you may.

Mr. *Darnell.* You say, that at first, when you saw the prisoner, he retired under a bulk?

Orrel. My lord, the horse rode among the mob. When I saw the prisoner first, I was on a bench at the pewterer's corner; and I saw him on the other side the way; and when the horses came up, I saw him under the bulk with his sword, and I saw him flourish his sword, and halloo.

Mr. *Darnell.* Was that before the guards came up to him?

Orrel. The first time that I set my eyes on him he had his sword in his hand.

Mr. *Darnell.* Therefore I ask, whether you saw him before you saw him under the bulk?

Orrel. I do not know what you mean by under the bulk.

L. C. J. I understood him, that when the horse came up, he retired under the bulk.

Orrel. When I first saw him, he was near the houses, and he had his sword then drawn; I had no sight of him till his sword was drawn; afterwards I run cross to him, and being sorry to see him so desperate, I spoke to him.

Mr. *Darnell.* I ask, if you saw him do any thing before he was under the bulk?

Orrel. He had his sword in his hand, and hallooed, and flourished his sword.

Mr. *Darnell.* Did he do any thing before they rode up to him?

Orrel. I saw him with his sword in his hand, when he was before the bulk: What I call under the bulk, is against the bulk.

Mr. *Darnell.* Now I ask, was he not on the ground, when you say he was under the bulk?

Orrel. He was upon his legs, upon the ground: He stood upon his legs, as I do now; and when the guards rode up, he went back against the bulk.

Mr. *Darnell.* Did the guards ride near him?

Orrel. Yes, I saw one or two of them strike him.

Mr. *Darnell.* What did he do when they came up to him?

Orrel. He pushed, or rather poked at their horses.

Mr. *Darnell.* Now where is the second place that you saw him?

Orrel. I persuaded him to go home; but I saw him the second time at the end of Long-acre.

Mr. *Darnell.* How far was that from the first place?

Orrel. About the breadth of this court.

Mr. *Darnell.* Did you not apprehend him to be mad or very drunk?

Orrel. I believe he had been drinking hard.

Mr. *Major.* Did you observe which way he was coming, when you first saw him?

Orrel. He was standing still.

Mr. *Major.* Did you see him among the mob?

Orrel. The mob was then as thick as could be; for when the guards rode among them, they divided of both sides the street, and were all about him.

Mr. *Major.* Which side of the street was you of, when you first saw him?

Orrel. When I first saw him, I was upon a bench, on the pewterer's side; I saw him first on the other side of the way, by the Griffin and Parrot, and then run over to him, and desired him to go home. Two foot-soldiers said, he was an honest gentleman; then pray, said I, take him home.

Mr. *Darnell.* When you say he was offering to push at the officer, was the mob dispersed?

Orrel. As soon as the guards came up to them, they would run back forty or fifty yards;

and as soon as ever their backs were turned, they got together again.

Mr. *Darnell.* When he made the push at the officer, were they not dispersed?

Orrel. They were drove into smaller bodies, of fifty or one hundred together, and filled all the doors and bulks.

Mr. *Darnell.* Did the prisoner go with them, or stay?

Orrel. After the guards had first rode round the fire, I lost him for a minute or two, till I had turned about and was looking for my friend; and then I saw the prisoner with his sword drawn, in the middle of the kennel-way, at the end of Long-acre, fronting the bonfire, and there I went and spoke to him, as I told you before.

Baron *Bury.* Was any body with him then?

Orrel. There was a pretty many boys, and mob getting together: The mob was thick of both sides of the way, and on the bulks; and as soon as he appeared with his sword drawn, they gathered together very thick.

Sol. Gen. Pray describe whereabout is the Griffin and Parrot; it may be material by and bye. You say the pewterer's shop is the corner of Queen-street, now where is the Griffin and Parrot?—*Orrel.* Just over against it.

Att. Gen. How many do you compute were got there together, when you came there first?

Orrel. I cannot tell; the lane was so thick from the meeting-house-door to the end of Long-acre, that one could not cross the way without crowding: There might be two, or three, or four thousand.

Mr. *Major.* Did you observe a watchman that was near him at any time?

Orrel. There were several of them in parties.

Mr. *Major.* Did you observe any thing said by any of the guards to any watchman?

Orrel. Not to any in particular.

Then *Richard Russel* was sworn.

Att. Gen. Look upon the prisoner, and give us an account whether you know him; and what you can say of his being among the mob?

Russel. I was commanded to go with my serjeant into Drury-lane; I am one of the horse-grenadiers: when we came into Drury-lane, we were commanded to return our bayonets, and draw our swords; and when we were drawn round the fire, over against Queen-street end, this gentleman, the prisoner, came down the lane, with his naked sword, huzzaing and flourishing it over his head; with that another soldier and I struck at him; he got between us, and made several pushes, and then we were commanded on the other side the way; and then, I suppose, he fell into the serjeant's hands.

Sol. Gen. Did you know him before that time?

Russel. I knew him when he rode in the first troop of guards.

Sol. Gen. Then he has been a soldier?

Russel. Yes.

Sol. Gen. Are you sure this is the man?

Russel. This is the man that drew his sword, and made several pushes.

Sol. Gen. Was he at the head of the mob?

Russel. He came down at the head of them, and swore, God damn you, are you for Low Church, or High Church and Sacheverell? I am for Sacheverell.

Sol. Gen. This, you say, he said at the head of the mob?—*Russel.* Yes.

Att. Gen. Did you see him at any time after this?

Russel. I saw him several times, but did not come near him.

Sol. Gen. Are you sure this is the man?

Russel. Yes.

Sol. Gen. You knew him before?

Russel. Yes.

Mr. *Major.* You say you had drawn round the fire: was there any opposition? or did the mob disperse themselves?

Russel. They were very tedious; and as we dispersed them one way, they drew together in another place. Afterwards we were commanded to draw into a line, and to draw back our horses that nobody might get behind us. I drew back into a door-way, and he was got behind, by the first horse, between our horses, and then we struck at him.

Sol. Gen. Did the rest of the mob endeavour to follow him?

Russel. The rest were more afraid, and kept off; but he swore, Damn him, he would come.

Sol. Gen. How did you strike him?

Russel. With the flat of the sword.

Then *Southerland* was sworn.

Att. Gen. I think you are the officer that commanded that party of grenadiers; look upon the prisoner, and tell us if you know him.

Southerland. I never saw him before that night; but I am confident that is the man that had his sword in his hand, for I saw him several times that night.

Att. Gen. Now pray, what did you see him do?

Southerland. I was commanded by the colonel of foot to go to Lincoln's-inn-fields; accordingly I went with a party of grenadiers, and dispersed the mob there: when I had done that, I came back to the horse-guards in Drury-lane: I drew them up in a line, and gave them orders to let none pass behind them, or before them, and then I rode down to captain Horsy, for commands; (for when we had joined the horse, I was under his command:) as I came back, I saw Purchase flourishing his sword, and crying out, Sacheverell, Sacheverell! I rode up to him; says I, Are you encouraging the mob? Damn you, says he, I am for Sacheverell; with that I raised my hand, and he drew back, and offered his point, but did not thrust. Says I, You are mad, you are distracted; go to your lodgings: says he, I am one of the life-guard: he said he was one, or had been one: says I, The more shame for you to be here. I struck at him, and he run back towards the horse-guards. I rode down

again to captain Horsy, and I saw him again at the corner of Long-acre in the same manner. Seeing him there again, says I to captain Horsy, This man has been troublesome to me on my post: says he, Make up to him, and cut him to pieces: as I rode to him, he got into Long-acre, and I saw no more of him.

Sol. Gen. You say he offered his point to you; did you see him do so to any other?

Southerland. No; I saw him offer no violence.

Mr. *Darnell.* Was there any mob at the corner of Long-acre with him?

Southerland. There was a party of them, and the horse-guards were dispersing them.

Mr. *Major.* When you rode up to him, and he went from you, was there any body with him?

Southerland. I cannot be positive of that.

Mr. *Major.* Did you observe him poke at any horses?

Southerland. No; I saw no such thing.

Then *George Richardson* was sworn.

Att. Gen. What troop of guards are you of?

Richardson. The third troop.

Att. Gen. Look on the prisoner, and tell us whether you remember him.

Richardson. I know him well, for we were abroad together in Flanders: he was in the first troop of guards when I was in the third.

Att. Gen. Now did you see him among the mob the first of March at night?

Richardson. I was upon the guard that night, and something after ten an alarm came to us, that the mob was up: we were ordered immediately to mount, and staid some time till the foot passed us at Whitehall. When we came near Lincoln's-inn-fields, we left the foot, and made to Drury-lane; when we came there, the officer commanded us to file off, and disperse the mob, which we did. I was riding among the rest, for they filed off; not four together, but singly, and when I came back again towards the fire, I saw there Mr. Purchase, and my officer, captain Hensbrough, was talking to him; what he said, I don't know, but as he passed him, Purchase made a thrust at him, but I beat down his point.

Att. Gen. Who did he thrust at?

Richardson. My officer, captain Hensbrough.

Att. Gen. Where is he?

Richardson. In the country.

Att. Gen. Then you say you beat down his point.

Richardson. I went to cut at him; says I, You rascal, have you a mind to kill my officer? I went to cut at him, and he threw himself against a bulk, and I hit the penthouse with my point, and my blade broke to pieces.

Mr. *Darnell.* You say you saw him talking with the captain; had he his sword drawn at that time?—*Richardson.* Yes.

Mr. *Darnell.* Were there any mob about him then?

Richardson. They were very thick about us of every side; we were dispersing them as well as we could.

L. C. J. Did the prisoner know capt. Hensbrough?

Richardson. I believe he did: for he was abroad with us at the same time when captain Hensbrough was there.

Att. Gen. My lord, we have done with our evidence.

Mr. *Darnell.* I am of counsel with the prisoner. And, my lord, I shall make no dispute, but, as the gentlemen on the other side say, there was a great tumultuous assembly, that was gathered together with an intention to pull down the meeting-houses: and I shall make no dispute but it was high treason in all that were guilty of that intention, or assisted those that were so. But on the other side, we must beg leave to say, that any person that was going along the street, and fell into company of those that had that design, though they might use some expressions which were evidences of the intention; yet if they were not in the intention, nor did any thing that was assisting in the execution of it, they will not be guilty of high treason.

They have offered evidence to shew there was such an intention. The first witness is only to shew, there was a general intention. And I must take notice, that what he says does not shew such a general intention as is necessary to make this fact high treason: for he says, as he went through the Temple, he heard some people say, they would go and pull down Burgess's meeting-house; others opposed it: some were for going that night, and others for deferring it till the trial was over. Now if they came to no other resolution, than that some were for going that night, and others after the trial was over; then the action which happened the next night, and before the trial was over, could not be an execution of that intention; nor can they say that any one of those that were at the Temple was at this execution. And therefore, if there be no other evidence to shew a general intent, then this action will stand without any previous intent, and only be a sudden execution of a design.

The first witness to the fact is Orrel: and I must beg leave to take notice of the introduction to his evidence, which he would make use of as a reflection on the prisoner; but I believe the gentlemen of the jury will not think that he had any hand in it. There may be wicked people enough to say such things: and no doubt Mr. Attorney will take care that they shall be prosecuted according to their deserts. And I would take this opportunity to say, that I do not see but he is free from any such charge. I see no inconsistency between his evidence, and that which was given for the prisoner. But as to that suggestion, that the prisoner's wife has been about in his neighbourhood, I do not see any thing of that proved.

As to the fact, he says, he came up Drury-lane half an hour past eleven; that there he saw the prisoner from the other side the way,

with his sword drawn; that he was hallooing and waving his sword; that the guards coming up, he retired toward the bulk; and that he pushed at the guards. The next place he saw him at was a little from thence amongst the horse-guards; there he was waving his sword, and crying, Damn all Sacheverell's enemies; I will fight them all; I will lose my life in the cause: Come on, boys; and to that purpose: and that he did push at the captain of the guards. I think these expressions carry a face of madness, or great drunkenness; nobody in his right senses would think himself fit to fight all his enemies, and call to them to fall on, when at the same time he stood single, and there were none to fall on.

L. C. J. He did not say there were none: he said they were not dispersed.

Mr. Darnell. I asked whether any body was near the prisoner when he used that expression; he said they were divided.

L. C. J. Call him again, and see if he said so. What say you, did he stand single and alone, and all the rest at a distance?

Orrel. No; I saw him at the head of a smaller body just at the kennel in Long-acre: I went and spoke to him, and pushed him back; and then there was a greater number.

Mr. Darnell. I ask, when he pushed at the captain, was there any body close to him?

Orrel. There were some before him; but they did not keep so close to him.

L. C. J. Where was it that you say he called to them to fall on?

Orrel. At the end of Long-acre.

L. C. J. Now were there any others coming up, or following him?

Orrel. A great many were close to him then; but he advanced farther than they would follow him.

Mr. Darnell. My lord, I say, this expression did speak a madman, or a man out of his senses in drink; but the substance of what he said was only, that he was for Sacheverell, and would die in the cause. Russel, one of the horse-grenadiers, says, he saw him there with his sword; and that he got in behind, and was between the horses: so that he must come in among the horses by accident; if he had been resisting the guards, doubtless he would have been at the head of them, and not have got in between them: so that he could not be then resisting them, but come there for shelter, rather than to resist them. The third is Southerland: he says, he saw the prisoner hallooing for Sacheverell, and in a little time lost sight of him, and saw him afterwards at the end of Long-acre; and that nobody was then with him. Richardson says he knows him, and saw him talk to the captain of the guards; and it would have been proper to have produced the captain, to give an account what passed between them, to know whether he was encouraging the mob, or defending the guards. The discourse that passed between them, we think, would have been material: but we think it is an evidence for us that it was not what is represented; for if it had been such a discourse, the captain would have ordered him to be secured: therefore we think it looks as if the captain did not take him to be concerned in the matter. They do not pretend to shew that he was at any of the meeting-houses; that he was instrumental in pulling them down; that he had any part of the materials; that he had any ensigns or banners: but the first account they give of him was about half an hour after eleven; and then most, if not all the mischief was over: so that all they can say is, that he came in at the latter end of it.

As to our case, we will shew that the prisoner is in his employment a bailiff; at the time that is mentioned, we have a good account to give of him all the day long: in the morning about nine, he had business to arrest one, and sent for one Amos Winch, to fetch a marshal's court writ to arrest the man in Hatton-garden: about eleven the plaintiff and defendant met together at the Crown in Chancery-lane, to end that matter: at twelve he went from thence to the Savoy; after that he went to one Grove's, that keeps a brandy-shop; and those of his employment give themselves a great liberty in drinking; and there he staid a while. From thence he went to the Horse-shoe tavern; and then returned to the brandy-shop again. About nine he went to his own house; when he came thither, there was other business required him to go abroad; for Mr. Broad the bailiff had sent for him to the —— tavern in Covent-garden; and there he staid till eleven. He was so much in drink, that as he was going home to bed, he was met in the street, and offered a chair: but before he got into the chair, the mob were got together; and they seeing him so much in drink, made sport with him; and he did express himself for Sacheverell, as every body was forced to do. After they had used him thus, they put him into a chair, and carried him home. He was in so sad a condition with drink, that it was apprehended he would have died; his wife and those about him were forced to send for a physician; accordingly they sent for one Plaxton, and he let him blood; which was done before twelve o'clock: and he continued thus ill all the next day. This will shew that he was not in the original intention; that he came accidentally at eleven, or half an hour after; and then the whole transaction was over. And however he might behave himself through that excess of drink, yet they must offer some evidence that he was in the intention or execution of that design; for the assault made on the guards is barely an assault, and cannot be high treason. If he did no more when he met the guards, but draw his sword to defend himself against the horses that were coming so near him; if he did retire, and only push at the horses, that will be no manner of offence; if he did misbehave himself, by reason of the excess of drink, and offer to push at a man, if he had killed him, it had been murder; but it could not have been high treason. When we have

proved our case, we will leave it to your lordship and the jury, and hope there will be no evidence to convict us.

L. C. J. I would ask where that captain is?

Richardson. He is in the country: He married a young lady lately, and is gone into the country.

L. C. J. When did you see him?

Richardson. Not this fortnight.

Mr. *Major.* My lord, the offence which the prisoner stands charged with is a great offence, no less than high-treason, in levying war against her majesty; the punishment, if guilty, will be the most severe; therefore we hope the gentlemen of the jury will expect plain, positive and direct proof, and will not be guided by private opinion, presumption or probability. My lord, I beg leave to consider how far the evidence given will affect the prisoner, as to the crime he is charged with. The treason they have given evidence of is an intent to pull down meeting-houses in general: It is not pretended that the prisoner was concerned in that, or was at any of the meeting-houses; but only they would prove him guilty, by aiding and assisting those persons that were concerned in that fact. Now it will not be pretended, that all that were present where those mobs were, are guilty of this crime: Many were there out of curiosity, many by accident, many passing along on their occasions; which we say was the case of the prisoner: It cannot be imagined that those persons that appeared there single were engaged in the design. We say, There was no resistance made by him to the guards; that he seconded nobody, nor did any body second him: And when he came to the guards, if he had appeared to be a leader of the mob, he was then in their power, and they might have secured him. One of the officers of the guards spoke to him; but what passed does not appear. If this fact had happened at any other place where he had happened to meet the guards, and he had assaulted them; that fact in itself considered, would not have amounted to high-treason. As to the place, that it was near where the mob was gathered together, that will be accounted for, because it was in his way home, and near the place where he lived. They take notice of several expressions he made use of at that time; of offering to fight the guards, and damning Sacheverell's enemies, and the like; we think these are such expressions as might be expected from a drunken man, a man in the condition he was in; and it does not appear to be in aid and assistance of that fact, which those tumultuous persons were about. It does not appear that he was privy to it, and the matter was over before he came. We shall give an account of his coming to the place where the guards were; that he was not among the people, but coming in his way home. And if it appears not to be done in aid of that traitorous design, and of those persons that were concerned in it, it will not be treason: For a man to be singly flourishing his sword when he was in the power of the guards, it shews the action of a man not in his senses; and that is a more probable account of the matter, than that he did it in aid of those traitorous persons. So that if that be only doubtful, and the fact is not levying war; if it be only doubtful, and is capable of being construed the one way or the other; yet in the case of life the jury will, in favour of life, incline rather to acquit than condemn. We will call our witnesses, and hope to give you satisfaction that he is not guilty of this crime.

Then *Amos Winch* was sworn.

Mr. *Darnell.* Give an account to my lord, and the jury, whether you remember Mr. Purchase any where, the 1st of March last? And when you saw him first?

Winch. He called on me, between eight and nine in the morning, to go with him, to execute a writ: I went with him, and we took the person.

L. C. J. I will not hinder you from taking your own method, if you think it will be of any use to shew where he was all day.

Mr. *Darnell.* It may be inferred from that evidence, that he was not concerned in the design.

L. C. J. Then you would make use of it to shew, that he was not in the design all the day, but to make his coming there accidental? I do not find that the queen's counsel say he was at any consultation.

Mr. *Darnell.* Pray give an account, when he first came to you, and when you parted.

Winch. He came to me in Sheer-lane, to go with him to execute a writ; and it was between eleven and twelve when they paid the money, and then he went away with the plaintiff.

Att. Gen. Are you acquainted with the prisoner?—*Winch.* Yes; very well.

Att. Gen. What profession is he of?

Winch. He is an officer to the high bailiff of Westminster.

Att. Gen. Who is he an officer to?

Winch. To Mr. Huggins.

Then *Cornelius Johnson* was sworn.

Mr. *Darnell.* What time of day did you see Purchase upon the 1st of March last?

Johnson. I was with him between eleven and twelve, at the Crown in Chancery-lane.

Mr. *Darnell.* How long did you stay?

Johnson. From thence we went into the Strand, and I parted with him at the Savoy.

Mr. *Darnell.* What time of day?

Johnson. About half an hour after eleven.

Mr. *Darnell.* Who was he going to at the Savoy?—*Johnson.* I do not know to whom.

Then *Benjamin Holden* was sworn.

Mr. *Darnell.* Pray give an account what time you was with the prisoner on the 1st of March last.

Holden. Mr. Johnson was going towards Whitehall, so we went all three together; and Mr. Purchase called on one that owed him some money, but he was not at home; but,

says he, I will find him out; but he did not meet the man, so we went to drink a pint of wine, and we agreed to dine together, at two o'clock, in Chancery-lane, which we did; and after dinner, says I to Purchase, Here is a sad noise and rout, no business is to be done, let us sit, and smoke a pipe; so we sate till four o'clock. Says I, Where are you going? I am going home, says he; but instead of that, he went to Grove's brandy shop, at Long Acre; there he went and drank.

L. C. J. Did you go with him?

Holden. No; but he said he would go there.

L. C. J. How do you know what he drank?

Holden. Grove's man told me so.

L. C. J. What time did you meet him again after you had parted wtih him going to Whitehall?—*Holden.* It was about two.

L. C. J. And what time did you part with him to go there?

Holden. It was nigh twelve o'clock.

Att. Gen. About four, you say, you asked him to smoke a pipe; what did you say to him?

Holden. Says I, There is a great noise about, there is no doing business.

Att. Gen. What did you mean by that great noise?

Holden. I meant about Dr. Sacheverell; there was a great noise about the Temple.

Att. Gen. Was the mob up then?

Holden. No.

Att. Gen. But he would not stay with you?

Holden. No, he said he would go home.

Then *John Lane* was sworn.

Mr. *Darnell.* Do you live at Grove's?

Lane. Yes.

Mr. *Darnell.* What time of day did Purchase come to your house?

Lane. A little before four o'clock; and he drank with my master till past five. My master gave him a business to dun a gentleman, and then they went to the Horse-shoe tavern and staid there till eight; then he came back again, and drank with us, and was very drunk.

L. C. J. When he went to the tavern, how long did he stay there?—*Lane.* Two hours.

L. C. J. How do you know?

Lane. I am sure of it; the man of the house will witness it.

Mr. *Darnell.* How long did he stay at your house?

Lane. He staid there, and about the door, till half an hour after eight.

Mr. *Darnell.* Where did he go then?

Lane. He went homewards, I suppose.

L. C. J. What did he do about the door?

Lane. He went to the door, and drank there with some men.

L. C. J. Who were they?

Lane. One Acton, and Gering, two officers.

Then *Dupper* was sworn.

Mr. *Darnell.* Do you remember that the prisoner came to your house the first of March last, with Mr. Grove?—*Dupper.* Yes.

Mr. *Darnell.* How long did he stay?

Dupper. I believe he was there about two hours.

Mr. *Darnell.* What time did they come in?

Dupper. In my opinion, it was about five or six o'clock.

Mr. *Darnell.* How long did they stay?

Dupper. They went away a little before eight, to the best of my knowledge.

Mr. *Darnell.* Were they there all that while?

Dupper. Yes, they were, upon my oath.

Mr. *Darnell.* Did the prisoner and Grove go away together?

Dupper. Upon my oath they did.

L. C. J. What time did the mob begin that night?—*Dupper.* I did not mind.

Then *Sarah Roch* was sworn.

Mr. *Darnell.* Did you see the prisoner at Mr. Grove's?

Roch. I was at Mr. Grove's, when Mr. Purchase and he came back from the tavern: I saw him in drink, and desired him to go home. I was half an hour in the shop; when he was there, he was very much in drink, and at last he went home along with me. When he came home, he sent for two pots of ale, and was at home half an hour, and there came a porter from a tavern in Covent-garden, to let him know somebody wanted him there, and he took coach to go there.

Mr. *Darnell.* What time was that?

Roch. It was about half an hour after nine.

Mr. *Darnell.* You say he went in a coach, was he in drink then?—*Roch.* Yes.

Mr. *Darnell.* Did any body go with him?

Roch. Yes, Mr. Loveday.

Mr. *Darnell.* Why did he go with him?

Roch. His wife desired Mr. Loveday to go along with him, because he was so much in drink, and to bring him home again.

Then *Thomas Loveday* was sworn.

Mr. *Darnell.* Give us an account when you saw the prisoner that night.

Loveday. I went home with him about nine o'clock, and he sent for two pots of drink, and while we were drinking them, Mr. Broad sent for him to a tavern in Covent-garden. His wife, at first, would not have had him go, but I said, it may be Mr. Broad had business with him; so she desired me to call a coach, and to go with him, and to see if Mr. Broad was there; so I went with him to the tavern, and left him there, and came home.

Then *Jacob Broad* was sworn.

Mr. *Darnell.* Did you send for the prisoner that night that the mob was?

Broad. I have known him some years: I happened to have occasion to have some goods appraised, which I had taken in execution; I sent for Mr. Averell and Mr. Holloway to appraise them; and when they had appraised them, I desired them to go to some house, and give me an inventory; then we agreed to go to the Cross-keys tavern; this was about half an hour

after seven. I left them there, making up their inventory, and went to a coffee-house hard by: There I heard of a gentleman, that was to be in that tavern, whom I had a warrant against for two hundred pounds: I had nobody with me; I went to the tavern, and then it was half an hour after eight; says I, I have nobody with me; I will send for Purchase: he came to me in a coach, much in drink; says I, what do you come to me for, fuddled? You are not fit to go about business: I will not go again, says he, unless you will give me a coach, and a pint of wine. I said, it was needless, I had rather give him a bottle another time; but I did give him a pint, and he staid till between nine and ten. Mr. Averell had occasion to go away, and he left the rest of us. He was much in drink, and I could not get him out of the room. When he is sober, he is a very civil fellow, but when he is drunk, he is quite mad. About ten, I took my leave of Holloway, and went over Covent-garden with him; he hung upon me, and was very troublesome. I bid him take a coach; says he, it is a mobbing night, I will see you home: Says I, you shall not see me home: Says he, I will call a chair for you, for you are drunk; though I was as sober as I am now. He called a chair, and to humour him, I went into it; Now, says I to him, pray do you go home: Now by that time, I believe it was within a quarter of eleven, or thereabout. After I left him, I had not been at home above an hour, but I had news brought me that he was beaten, and used very ill, and carried home very bad; and this is all I know of the matter.

Mr. *Major.* Where did you part with him?

Broad. It was in Bridges-street.

Mr. *Major.* Did you see which way he went?

Broad. I did not see which way he turned, but it was about eleven o'clock, and he told me, he would go directly home.

L. C. J. Was the mob up in Drury-lane, when he came to you?

Broad. When we were in the tavern, the master of the house came and told us, that Mr. Burgess's meeting-house was pulled down, and burning; and that they had begun to pull down another. This was about ten o'clock.

L. C. J. Where is his house?

Broad. In Drury-lane, a little way from Long-acre.

L. C. J. Then after you parted with him, he must go through the mob. Now you, who were as sober as ever you were in your life, and sensible how bad he was, must have taken so much care as to consider, which way he was to go home: How comes it to pass, you did not see him home?

Broad. My lord, I would have seen him home, but I am not a man that engage myself in mobs, for those of my employment generally suffer in mobs; I avoid them if I can; and if I meet them I give them all the good language I can.

L. C. J. But there is another way you might have secured him from the mob, for I suppose he was well disposed to have staid longer at the tavern.

Broad. Yes; but I did guess, that at eleven o'clock those mobs are generally over; and before we came out of the house, we heard the guards were abroad, and I guessed he might go home safely the way he was to go.

L. C. J. You have given another reason why you should take care of him, because he was troublesome in drink, and was a bailiff, and liable to be affronted; therefore you should have taken care of him.

Broad. I believe if it had been another night, I might; but if I had gone with him, then I might have been in the same condition with him: I do not know but I might have been forced to say something or other, to save myself from the mob.

Purchase. My lord, the meeting-house is as near my house as it is from hence to your lordship; at a back window I can hear them preaching.

Then Mr. *Bembridge* was sworn.

Mr. *Darnell.* Pray give an account of what you saw and observed of the prisoner, that night that the mob was up.

Bembridge. My lord, I was at an oil-shop, at Long-acre end, with several others, about eleven o'clock, when the guards came and dispersed the mob that were there. When they had been there a quarter of an hour, or thereabout, the prisoner came to the end of Long-acre, and stood there by himself, and nobody near him. One rode up to him, and talked to him for some time; they had not talked long, before two more rode up, and fell upon him, and drove him a few doors; he retired, and there they left him.

L. C. J. Who were the others that were with you in the house?

Bem. There was one Jefferies, who lives in Bloomsbury-square, and a watchman in Gray's-inn passage, and one Mr. Cheekly: there was another gentleman of the Temple, but I do not know his name.

L. C. J. What was your business there?

Bem. I was going home, and the mob was there, and I got in for shelter.

L. C. J. Who did you see at the fire, besides the prisoner?

Bem. There was nobody there then.

L. C. J. When did you see the prisoner first?

Bem. It was about eleven.

L. C. J. Were the guards there then?

Bem. Yes; and they had dispersed the mob.

L. C. J. What do you mean by the mob being dispersed? Was the street clear? Or were they of the sides of the street?

Bem. Some of the guards rode one way, and some another; and they drove the mob before them.

L. C. J. Were there none of the mob in the street?—Mr. *Bem.* I saw none nearer than where the guards had drove them to.

L. C. J. You say you saw the prisoner there; what was he doing?

Bem. Nothing at all.

L. C. J. Had he his sword drawn?

Bem. No.

L. C. J. When the gentleman came up single to him, and they talked, had he his sword drawn?—*Bem.* No.

L. C. J. How long after that, before the other gentleman came up?

Bem. Instantly.

L. C. J. When they came to him, what passed?—*Bem.* They struck at him.

L. C. J. What did he do?

Bem. I saw him do nothing, but retire back towards Long-acre.

Mr. *Major.* Was any resistance made by him to the guards?— *Bem.* No.

Then *Henry Avery* was sworn.

Mr. *Darnell.* Pray give an account what you know of the prisoner, the first of March last; where you saw him, and in what condition he was.

Avery. I had been appraising some goods for Mr. Broad, and after we had done, he asked us, where we would go to make up the inventory? Says I, to the Cross-keys in Covent-garden. When we had made our inventory, Mr. Broad came in, and said, he wanted Purchase. He sent for him, and he came very drunk: soon after, I was called out, and left them. All I know of him is, that he was very drunk: he came in a coach.

Then *John Holloway* was sworn.

Mr. *Darnell.* Were you at the tavern, when Purchase came in?

Holloway. I was one of the appraisers; we went afterwards to the Cross-keys, to make our inventory.

Mr. *Darn.* What condition was he in?

Holloway. Very drunk.

Mr. *Darn.* How long did he stay?

Holloway. He took part of a quart of wine.

Mr. *Darn.* What time was it?

Holloway. It was after nine, when he came in; and I believe it was after ten, when he went: we came all away together.

L. C. J. Where did you go?

Holloway. Home.

L. C. J. Where do you live?

Holloway. I live in St. Ann's.

L. C. J. Where does Broad live?

Holloway. He lives in St. Clement's.

Then *James Blanfield* was sworn.

Mr. *Darnell.* Did you see Purchase that night? And at what time?

Blanfield. About a quarter after eleven, I saw him come up Drury-lane, towards the fire, when the guards were drawn up, and the mob were gone.

Mr. *Darn.* Were the mob gone, when he came to the fire?

Blanfield. Yes; except some old women and children, that were not concerned.

Mr. *Darn.* Who was with him?

Blanfield. There was nobody with him; but he came to the end of Long-acre, and had not time to stand there long, till one spurred up to him, and then he seemed to lift up his hand, to keep off the horse; and presently, another struck at him, but he retired towards Long-acre, and I could see no more of him.

Mr. *Darn.* Was his holding up his hand, in your opinion, any thing more than to defend himself from the horse?

Blanfield. I believe he had no design, but to defend himself from the horse, and the blow.

Att. Gen. You say there was no mob when you was there?—*Blanfield.* No.

Att. Gen. Did you see his sword drawn?

Blanfield. No: he lifted up his hand, with his sword in his hand, but it was not drawn.

Mr. *Thomson.* What time was this?

Blanfield. Between eleven and twelve o'clock.

Mr. *Thomson.* How much after eleven?

Blanfield. I believe, about a quarter, or half an hour.

Mr. *Thomson.* You say, the guards were there, but no mob?

Blanfield. Yes, a few women.

Mr. *Thomson.* What did the guards do, if there was no mob there?

Blanfield. They rode about to disperse the women, and other people that were there.

Mr. *Thomson.* You say, they dispersed the women, and the other people there. What other people do you mean?

Blanfield. People that I suppose were staring on: the chief mob were gone.

Mr. *Thomson.* When you saw Purchase there, there were some other people besides the women; was he not among those other people as you call them?

Blanfield. He came up by himself, and nobody with him.

Mr. *Thomson.* Did he stand in the street alone? Or did he join those other people?

Blanfield. There were no others to join with him.

Mr. *Thomson.* This man plainly contradicts himself.

Then *Thomas Street* was sworn.

Mr. *Major.* Did you see the prisoner that night the mob was up?

Street. I am the watchman that belongs to that part: I had gone my round at eleven, and coming into Long-acre, I saw two or three gentlemen riding after the prisoner; I stepped over the way, to see what the matter was, and I saw one cutting at him; and he went to save the blow, but his sword was not drawn, but he fell against a bulk of a door, at the end of Red-lion-court; so says one of the gentlemen to me, Watchman, go and knock him down; so I ran after him, and overtook him: who are you? says I; says he, Street, it is I, I am drunk, the guards have abused me, and cut at me: and so seeing him drunk, I let him go.

Mr. *Major,* What condition was he in?

encouraging the people to do so. This is the most of the evidence that can be against him: then the question is, whether this, singly, can make him guilty of high treason? For if his part in the general intention be out of the case, as it must be if he came after the fact was committed, then the question will be, whether a man that comes in afterwards, by saying the worst he can say, shall make himself guilty of high-treason?

My lord, we hope the evidence on behalf of the queen is reconcileable with the evidence for the prisoner; and that the evidence for the prisoner shall be believed, that he only defended himself against the guards that rode up against him: for Richardson says, he did not see him when the guards first came there; and that agrees with the account that Broad gave; for he says he heard the guards were marching before they came out of the tavern. Blanfield agrees with the evidence that Orrel gave: says he, The mob were dispersed under the eaves of the houses. Says Blanfield, At the time the guards struck him, there were people under the houses: but I do not look upon them to be the chief mob, but only some women and people looking on. And then the question is not, whether his sword was drawn or not, but on what occasion, and what his design was in drawing it? Our witnesses say, that when the guards struck at him, he only held up his hand to defend himself; and that might fright the horse; and he being angry at it, spurred up and struck him. It is natural to think the guards should ride up to those that were standing in the street, and enquire who they were. I do not depend on the circumstance of his being in drink, that it is any excuse; for then if a man has such a design as this, he may easily pretend himself to be in drink, and he will give himself drink enough to encourage himself to do so bold an act: but the use we make of it is to shew, that he had not any intention in this. He had drank himself too far for to have a design of joining with any party, or do any particular thing. And my lord Coke, in his Pleas of the Crown, where he is giving his opinion what is levying war against the queen, says, that the act alone is not sufficient to convict the party; but the mind is to concur in it. It is not barely doing an act that is sufficient to convict a man; for he must do it with that design. Indeed if a drunken man stabs another, it is murder; because malice is supposed where such a fact is done. But in case of high treason there must be an intention proved in the party that doth the fact. If he was in that condition at the time he came out of the tavern, and did any thing by way of encouraging them, we hope it is not such an evidence against him as will make him guilty of any part of the intention, if his mind did not concur in it.

Just. *Tracy.* My lord Coke says, in the Case of Oldcastle, where he was forced, and did the fact *pro timore*, that such an act could not make him guilty.

Mr. *Major.* My lord, we hope the evidence is not sufficient to induce the jury to believe he was concerned in the general intent to pull down the meeting-houses; there is no proof offered that he had any intention or part in that matter; nor does it appear that he was privy to it. We have shewn where he was till the time he was met by the guards. As for what was done by him then, it will not be pretended, that barely assaulting the guards is levying war; but it must be construed to be an aiding and assisting those persons in that intent to pull down the meeting-houses. As for that, it does not appear he had any part in it, but it was done before he came to them: nay, he could not be assisting to the mob; for before he came to them, the guards were come down, and the mob were soon after dispersed. The first time that any account is given of him is, when he came behind the grenadiers. Now can it be supposed that any man that intends to head the mob would come among the horses, and that singly? Whatever he said, his cursing and swearing, that will not make him criminal in this case: it appears to be a thing that was accidental and done on a sudden, and was the effect of his drink, and that which a man that had no intent of joining in the general design might be guilty of.

Att. Gen. May it please your lordship, and gentlemen of the jury, we think that, notwithstanding any thing that has been said by the witnesses, or insisted on by the counsel, it is a plain case that the prisoner is guilty of the crime laid to his charge. They have called a great number of witnesses; and I believe their intention in that is, that you should take them by tale, and not by weighing the evidence and the force of it; for I will be bold to say, as to all the witnesses that have been produced to prove him drunk, nothing which they have said as to that point can make any alteration in the case. As to the witnesses produced for the queen, I do not find they pretend to say any thing in diminution of the credit of them; nor can they say that any one of them is likely to be biassed, or to be under a mistake; only one of them that took him to be a country gentleman, when he proved to be a bailiff. As Mr. Darnell says, God forbid that any one should have harder measure because he is a bailiff, but that he should have the same justice as any other man: but I must say, it is an easy mistake to take him for a gentleman, when it appears by the evidence, that one bailiff can go to the tavern in his coach, and the other go from thence in his chair. The counsel for the prisoner have insisted, that our evidence does not maintain the charge; for they say this rising is not high treason, if there were not a general intent to pull down meeting-houses: and we do not bring it home, to make it appear that he was privy or consenting to this design; but we desire they will consider, the first witness gives an account that a resolution was taken on Tuesday to pull down Burgess's meeting: by whom was that taken? It was by the friends of Sacheverell that came hallooing with him. Who

is it afterwards that pulled them down? Those that halloo and cry out for High Church and Sacheverell. What did the prisoner say when he was among them? Damn them, he was for High Church and Sacheverell; he would lose his life in the cause. It is certain these meeting-houses were pulled down, and that by those people thus assembled, and who cried out for Sacheverell, and were the friends of Sacheverell, and declared they would oppose all that were enemies to him, and this man cried out as loud as any of them. But we do not take it that it is necessary to prove, that every man that was concerned in this matter was originally in the consult and first design; but the evidence gives an account, that he joined with them, he assisted them. If drawing his sword; if flourishing it, and calling out to them to resist the guards, and pushing at the officer of the guards, is resisting, surely there is sufficient proof against him. If a rebellious number of people are got together, and a man that knows not of it at first, will join with them, and act with them, and that which they are doing is treason, though he came in late of the day, he must deserve the same reward as those that came in early in the day.

There is one thing observable in this case, that this meeting-house was not so soon destroyed as Dr. Burgess's; for the fire was almost out there, when the waterman, who is convicted, hallooed them to this meeting; that it was burnt first, and then they came to this fire, and that was much later. It appears he lives in the neighbourhood of this meeting-house; for he says he can hear them into his house: now a man that had been in the neighbourhood of such a place, and had been a good subject, if there had been a tumultuous design to pull down part of his neighbourhood, instead of joining with those people, he would have endeavoured to have hindered them from doing mischief; but instead of endeavouring to prevent it, you find he joins with them, he draws and flourishes his sword, and acts in it more than any other person I have had an account of. The other witnesses are to give an account where he was till five in the afternoon, and thence till eight at night; and afterwards he is sent for by Mr. Broad, and with him he stays till this matter is transacted. The places he has been at before, are the alehouse, the brandy-shop, and the tavern: are not these the proper places to prepare those that are to engage in these sort of things? For whenever people go on these attempts, it is necessary to fortify themselves by strong waters and strong liquors, as he did. The witnesses that saw him there, and give an account of him, some of them say, he only held up his hand; others say, he had a sword in his hand, but it was not drawn, and he held it up only to save himself from the assault of the guards. Now the account you have is, that the guards struck with the flats of their swords, and you hear of nobody killed, nor any great harm done to any body; therefore it is not to be thought they should, without provocation, fall upon this man, and attack him. As to the exactness of time, there is little weight to be laid on it, for the whole transaction does not take up above the compass of two hours. The guards came out about half an hour after ten, and before twelve the mob was dispersed. But that which you will take into consideration will be the series of the facts, and see how they stand. Orrel says, he saw the prisoner with his sword drawn, and flourishing it, and when the guards came, he assaulted them in the manner you have heard; and they have said nothing to impeach our evidence; what they say makes it appear he was there, and thus acting among them.

Sol. Gen. My lord, the evidence given by the prisoner, and the defence made on his behalf, is so far from giving any answer to our evidence, that it renders the fact more probable than it was before: For they have proved, that he is a man likely to be concerned in such an affair; that he had been drinking all day, and fit to engage in such a matter; and that he is troublesome in his drink; which are circumstances that shew the inclination of the man, and make it probable that he should engage in this matter. The facts we take to be high-treason. They say on the other side, it is not so, because we must prove a general intent to pull down all meeting-houses, and the pulling down a single one is not sufficient. I will not now dispute that point with them; for that there was such an intention appears most plainly by what passed that night, by the several meeting-houses that were pulled down. It was a general intention, or else they could not have gone through so many in so short a time: And it is not necessary to prove any previous consult, for the act itself is treason: Where the intention is the treason, there the act must be proved that shews it. So it is in the case of counterfeiting the coin, nobody will say there is any need to prove any design: That there was such an intention is plain, by what was committed: and any one that joins with such a number of people who are committing treason is equally guilty with them. If he knew nothing of it till he saw them, yet if he joins with them in an action that is treason, he will be equally guilty with them. They say he had not his sword drawn; that he was going home, and he only lifted up his hand, with his sword in his scabbard, to defend himself. But that evidence does not interfere with what is offered on behalf of the queen; or if it did, yet we think our evidence is of greater credit and weight than what they offer: For they that encounter a man who has his sword drawn, can never be mistaken, but deserve more credit than those that are only passing by, and have no danger from, or concern with him; but this is all consistent, for Russel, and those who say his sword was drawn, say, he came from St. Giles's way, the others say, it was after the mob was dispersed; and that he came up the lane; and that he went off by Long-acre, and they saw him no more. Now, since nobody

saw him home, he might go that way, and afterwards come down and join the mob, in the manner the soldiers have told you, and then he might be driven off, and come some way round again, with his sword in his scabbard: And these must certainly be different times, for those who speak of his sword being drawn, say, it was when he came from Holborn; and they that say his sword was in his scabbard, say, it was when he came from the other way, and then there can be no contradiction between the evidence. And we take it, the law is as plain as the fact, and that it is high treason.

Mr. *Thomson.* My lord, I would state the objection in the utmost latitude; and yet, with submission, the facts proved on the prisoner make him guilty of high-treason. They have insisted, that there was no previous intention in this man to pull down these meeting-houses; that at that time he was in drink, and not capable to have any intention of doing any particular act whatever, and that to the aiding and assisting *mens* must be *rea*; and that he came when the meeting-house (the materials of which made the fire in Drury-lane) was pulled down, and all was over, and so neither in the first design, nor assisting at the execution of it. This, my lord, I take to be the strength of their objections. As to the previous intention, that is not necessary to be proved, and has been so lately determined, that I need not trouble your lordship to repeat any thing about it. If a man joins in an undertaking of this kind, which was general, though he comes by accident, it makes him a principal in that matter. Then they would make use of his drunkenness, to excuse him from his assisting in the design; they say, if he had not his senses, he could have no intention even to aid or assist any design. Those gentlemen know very well, that drunkenness is no excuse for any act whatever: If a man does deprive himself of his senses, and commits a fact that would be a crime in a man not in drink, it shall be construed to be his act, as much as if he had his senses. Beverly's case, in the 4th Report, is express in that point. Then they say, the meeting-house was pulled down before, and he came when all was over. My lord, I appeal to the memory of your lordship, and the jury, whether they are not mistaken in that fact: for the fire was burning when he came, and the mob about it; they were then burning the inside of that meeting-house which they had pulled down; and if they had not been dispersed, in all probability would have gone on with their design; and he was there when the guards were endeavouring to disperse them, and prevent their going on to do further mischief, and he opposed them. They say, there was no resistance made by the mob, they were quiet; but this man did resist, he pushed at the horses, and at the men, if you will give credit to the witnesses; and he did as much as was in his power to animate and encourage the mob to resist: By his expressions, and his actions, he endeavoured to hinder the dispersing of that mob, who were executing a treasonable design. That is the aiding and assisting of them, which is his crime. Then they say, he was there accidentally, and fell in as he was going home quietly. I take that to be otherwise on the evidence; for however he might be left by Mr. Broad, he was seen coming down from St. Giles's, whereas his way home was the other way. We must submit it, my lord, whether his aiding and assisting in this manner, does not make him guilty of treason, as well as those who were executing the traitorous design.

L. C. J. Gentlemen of the jury, George Purchase stands indicted, for that he, with a great multitude of other persons armed, did, the first of March last, levy open war against her majesty. The evidence that has been given by the queen's counsel tends to shew a design to pull down the meeting-houses about this town, and that design executed on a great many of them: The guards coming to disperse those that were so employed, and the prisoner resisting the guards, joining with the mob, and assisting them. To prove this they produce Tolboy to give an account of a discourse, rather beginning than finished, of a design of pulling down Mr. Burgess's meeting-house; some were for pulling it down immediately, others were for deferring it till the morrow, and others for letting it alone till the trial was over: And as they were thus talking, he left them. He calls it a resolution of pulling them down, because nobody did oppose it, only differed about the time, but he did not stay till they came to any fixed resolution. The next witness is Orrel, who gives you a very particular history of this action: He tells you, at Leonard's coffee-house he had heard that they were pulling down Mr. Burgess's meeting-house; that he went into that meeting-house twice or thrice while they were pulling it down; that thence they went to Fetter-lane; that they had almost finished the work there; he found almost every thing there down, and they were carrying the materials to Holborn, and burning them: Thence they went to Lincoln's-inn-fields, and there they found a fire, where they were burning the materials of Mr. Burgess's meeting-house. He tells you what outcries there were there, and speaks of some that called them to Drury-lane, and a consult that was, whether they should go thither, or to Wild-street? That some that headed the mob, swore they would have all the meeting-houses down, and called them along, and led them to Drury-lane; that when he came there he found them breaking down the door of that meeting-house. He tells you what passed there; that he went afterwards, and met the guards, conducted them to Drury-lane, and run before them; that the horse were commanded to disperse the mob; that he saw one with a sword, that was sheltering himself under the houses, and there he pushed at the horses with his sword. His expression is, that he poked; he

did not make a regular pass, but poked at them; that several of them struck at him, and drove him from among them; that afterward he saw him stand at the end of Long-acre: that he went to him, and persuaded him to go home, but he did not think fit to go home; but when the guards came up he resisted them: Says the witness to him, Do you consider what you do in opposing the guards? You, in effect, oppose the queen: What is his answer? It was, Damn you, are you against Sacheverell? Thereupon, he cries out, High-Church and Sacheverell! He would fight the guards, and he would lose his life in the cause; with such like expressions, which he repeated several times, and shews how resolute he was in the matter. He tells you, that he resolutely made a full pass at one of the officers, as he was partly passed by him, pointing towards his flank; and he apprehends he must have run him through, but that another soldier struck down his point: that then the soldier struck at him, and the witness apprehending it might produce more blows, and that there might be firing, he thought fit to retire: That he went down the street, and the mob was forced by them that way, and he heard some of them declaring, we will be even with them to-morrow night, for they dare not fire upon us. He gives you an account of the place where he first saw this man, which was over-against the pewterer's at the corner of Queen-street, which is between Long-acre and St. Giles's.

The next witness is Russel, who is one of the horse grenadiers, and one of the first body that came into the lane. He says, they were commanded to disperse the mob, and to take care to place themselves so against the houses that nobody should come behind them, and that they should hinder any body from passing before them. That direction was prudent and necessary; for if they had stood so, that the mob might have come behind them, they would soon have had them off their horses. He tells you, that the prisoner came down from towards St. Giles's, as they were drawn up in this manner, with the horses tails to the wall. He tells you, this man did not think fit to pass before the horses in the open street, but had a mind to get in behind the horses, and did get past one of them, but the witness's horse being drawn back between two bulks, he could go no further, and the witness beat him out: That afterwards he came at the head of the mob, and flourished his sword, and swore, Damn you, who are you for? Are you against Sacheverell? He takes notice, that as they dispersed the mob of one side, they gathered on the other for a while; and it was about a quarter of an hour before they had quite dispersed them.

The next is Southerland, he tells you, that he saw him several times; that he drew up his grenadiers at the end of Queen-street, and he commanded them to draw back, so that none might come behind them; that he saw the prisoner flourishing his sword, and held out the point to him, but did not make a pass; then, he says, he lost him for a while, but afterwards, when the greatest part were dispersed, he saw him standing over-against Long-acre, with his sword in his hand, and told the captain he had been troublesome to him before, and the captain; thereupon, bid him cut him to pieces, as his expression was: that they rode up to him, but the prisoner made his escape into Long-acre.

The next is Richardson: He is a trooper in the third troop of guards: He tells you, that he remembers the prisoner, when he rode in the first troop; and that he knew him abroad, and here. He gives an account in what manner they marched; that at the corner of the street, captain Hensbrough, (whom he believes the prisoner must know, because he was in the guards at the same time) spoke to him, but what he said the witness does not know; but as he passed by him, the prisoner thrust at him, and the witness apprehending he intended to kill the captain, he beat down the point of his sword, and struck at him with his sword, but the point hitting against the pent-house, his blade broke in pieces. This is the substance of the evidence for the queen, and if there be no answer made to it, proves him to be assisting this mob, and opposing the guards, and attempting to kill the captain, and taking the best advantage to do it, as he passed by him.

On the prisoner's side, they have produced several witnesses, a great many in number. They begin with him in the morning, and give an account, that in the morning he came to Sheer-lane to execute a writ, and about twelve the money was paid, and then they parted.

The next witness is Johnson; he says, they parted at half an hour after eleven; so that these two differ in their accounts about half an hour; for one says they parted at twelve, and the other says, at half an hour after eleven: This I take notice of only to shew an uncertainty as to the time.*

Benjamin Holden is the next; he says he went with the last witness, and the prisoner, to the Savoy; and they parted at twelve, and met again at two. One use they make of this evidence is to shew, that he was not in any cabal that day, for they shew how he employed his time: But you will observe, there are two hours, from twelve till two, which they give no account of; though they pretend to shew where he was all the day. This witness says, they parted about four or five o'clock, and then the prisoner went to Grove's brandy-shop: Lane says, he drank at his master's house till past five, and then they went to the Horse-shoe tavern, and came back to the brandy-shop about eight, and continued drinking there about an hour.

The next witness is Dupper, who keeps the tavern: he says, they came to his house about five or six o'clock, and went before nine; and satisfies you, that during all that time they were

* By the same Chief Just. in Dammaree's case, *ante*, "It is almost impossible to be exact to half an hour."

in his house: Roch went home with him from Grove's, I should take notice, that all these say he was drunk. She says, she got him home, but then he was sent for by Mr. Broad: He was much in drink, and they got a coach, and another went with him to see him there. Loveday says, he was in drink: and when it was proposed for him to go to Mr. Broad, some said, it was not fit for him to go, because he was in drink; and this witness went with him, to see him safe there. Mr. Broad tells you the occasion of being at the tavern; some goods were taken in execution, and as they were making an inventory, a warrant was brought to him against a gentleman, and he sent to the prisoner for his assistance, but he was so drunk he did not think him fit for business, and bid him go home again; which he would not do, unless he would give him a pint of wine. When they came away, he told Mr. Broad it was a mobbish night, and he would see him home, and fancied he was drunk, and would make him go into a chair, and then the prisoner went towards Drury-lane in order to go home.

The next is Bembridge; he says, he was at an oil-shop, at Long-acre end; that about eleven the guards dispersed the mob; that afterwards the prisoner stood at the end of Long-acre, and an officer rode up to him; that the mob was then dispersed, and the officer having spoke to him, some others struck at him, and forced him away; he saw no sword at all that the prisoner had. Avery says, he was with Broad when the prisoner came in, and says he was drunk. Holloway, the appraiser, says, the prisoner was drunk, and that he went away with Mr. Broad and him; and tells you, it was after ten when they parted.

Then Brathwaite tells you, he saw him a quarter after eleven come up the lane towards the fire; that he came all alone; that one of the guards spurred up to him, and some of them struck at him, but he did not strike at them, but seemed to lift up his hand to prevent the horses from coming upon him. The watchman tells you, it was a quarter after eleven; that the guards struck at him, but he got up the court, and they sent the watchman after him to knock him down, but he knowing him, did not think fit to do it. Cheekly says, that at the Castle tavern he met the mob; and some of the guards rode up to the prisoner, but the mob was gone a quarter of an hour before; and says, that the prisoner had no sword. Plaxton only says, that he was sent for that night to let him blood: and Brooks gives some account of his behaviour.

The matter will be now for you to compare these two evidences together; and to consider, first, whether those things are true which are sworn by the queen's witnesses, or whether they are answered by the witnesses for the prisoner; and then what stress is to be laid upon his being in drink: and as there is no objection made to the witnesses of either side, you are to take what they have said to be true, abating the little mistake a man may fall into as to the exactness of time, and the like. As to what they would pretend, of his going straight home from the tavern, you will observe there is time enough for him to have done all that he is charged with; for it all happened in a quarter of an hour or a little more. If he parted from the tavern about ten; from that time till a quarter or half an hour after eleven is time enough to do all that has been spoken of. I think there is little stress to be laid upon the time, because there is a series of facts: the first thing done by him, before the mob was dispersed, was his coming behind the horses; and you will find the reason for that command of the officer to let none come behind him: but he, as drunk as he was, knew there was no hurting the guards, unless they could get behind them. He had been in the guards himself; and you must consider what design he had in getting behind them, when the street was open for him to go in. But if he had a design to get behind them, that the mob might pull them off from their horses, he acted very rationally, though he was drunk. That fact was proved by Orrel and Russel. Another fact was, when they were drawn up above the fire near Holborn, he was then coming down from St. Giles's: So that this is plainly not the time that the witnesses speak of when he was coming up the lane. Then this was only when the horse-grenadiers were there; and the other was when the horse-guards came, when they were drawn up below Long-acre; and there they swear he made a pass at captain Hensbrough: and Russell tells you, that as he sheltered himself himself under the houses, his sword struck against the penthouse, and broke to pieces. Southerland speaks of another time when he was at the corner of Long-acre; and then indeed he was doing nothing: and that is the time when he told the captain that he had been troublesome to the grenadiers; thereupon the captain bid him go and cut him to pieces: he did go; and then the prisoner made off: but this was when the mob was in a great measure dispersed. Now when do his witnesses speak of? They speak of a time when he came up the lane. That surely is not the time that either of those witnesses speak of: they say he stood quiet, and a soldier rode up to him, and struck him. You will consider whether that was not the time that Southerland speaks of. So that you will consider whether the evidence of both sides is not reconcileable; whether after he parted from Broad, he might not join the mob, come down from towards St. Giles's, get behind the horse, and afterwards make a pass at the captain, and then be driven down with the mob towards the lower end of the street: if so, it was natural, when they were driven down the lane, for them to go home; and as his home was up the lane, he must come back alone. If you do believe he was guilty of resisting the guards in this manner, when he was admonished what the consequence was, and he, instead of making an answer, only asks, are you an enemy to Sacheverell?

and encourages the mob to follow him; you are to consider how far this will make him guilty with the rest: for the counsel for the prisoner, though they object to the evidence of what passed in the Temple, yet they agree this tumult was a rebellious tumult; and the fact shews there was such a design. Indeed they did not pull down all the meeting-houses; but the reason was, because the guards dispersed them. They admit therefore this was levying war in the persons concerned in it; but they would excuse him, that he came late and very drunk, and did nothing, but was beat by the guards; and that his drunkenness disables him from having a share in the design; and therefore he cannot be guilty. It is insisted, that it is necessary he should be engaged in the original design: but there is no need of that; for that is the earl of Essex's case: it is there adjudged, that the earl of Southampton was guilty of treason, by joining the earl of Essex, though he did not know his design. And those that dispersed upon the queen's proclamation, it is said they were entitled to the queen's grace; but it is not said they were not guilty of high-treason. In felony there may be accessaries, those that are concerned in contriving the felony, or afterwards in assisting the person; but in high-treason all are principals, and are guilty equally with those that are the actors. If there is a design to levy war, and it is not levied, those who were in the design, are guilty of treason; and so those that act in it, though they were not in the original design, are guilty. Say they, he was not at the pulling down any meeting-house: it is true; but he was defending those that did. It is plain, by the course they took, if they had not been dispersed, they would have pulled them all down. It is not indeed accomplished; some of them are standing; but it is because they were dispersed. Now is not this aiding them, when he endeavours to kill the captain of the guards who came to disperse them? And if he could have prevailed to have baffled the guards, they might have gone to the rest; and when they had pulled them down, they might have pulled down every man's house they thought fit. My lord Coke's expression is made use of, that the act does not make the man guilty, unless the mind be guilty; therefore they would infer, that he must be concerned in the design originally. This is a great fallacy; Oldcastle was at war against the king; several furnished him with victuals and drink, and it was found they did it merely for fear of death; but as soon as they could escape from him, they did; and thereupon they were adjudged not to be guilty of treason. Now you may easily observe the difference in this case: if a man be *non compos*, it excuses him from felony, and all other crimes.* That man cannot be criminal that has not the use of his reason; but can that be applied to any one that is drunk? That matter is stated in the same case: he says, if a man will make himself drunk, shall this voluntary, this criminal incapacity of his mind excuse him? No; he says it shall not. And it would be of dangerous consequence if it should. Indeed, his being drunk might make him more forward than otherwise he would have been; but you see he had sense enough to get between the guards and the wall, and to attack the captain when he was passed by him. If he cannot be criminal unless his mind be so, I would ask, if he had killed the captain, would it not have been murder? If so, then if the act be treason, he would be guilty notwithstanding his drunkenness. Therefore if you do believe he committed the facts, there is no regard to be had to his drunkenness.* If the witnesses do not contradict one another, but they may be reconciled, you need not then weigh which side you most credit; but if you think they cannot be reconciled, but that the witnesses overthrow one another, then you must consider which of them is of most weight; but if they cannot be reconciled, I think the jury can go in considering evidence: and where such a construction can be put on it, it ought to stand.†

Justice *Tracy*. As to the matter of law, I concur with my lord chief-justice.

Baron *Bury*. So do I.

Then the Jury withdrew; and being returned, found a Special Verdict.‡

* As to this see the cases of Edward Arnold, A. D. 1724, and of lord Ferrers, of Hadfield, and of Bellingham, as therein referred to.

* See what the chief justice said in Dammaree's case, p. 603, 604.

† So in the former editions.

‡ "With regard to the case of Purchase, there was some diversity of opinion among the judges present at his trial, because it did not appear upon the evidence that he had any concern in the original rising, or was present at the pulling down any of the houses, or any way active in the outrages of that night, except his behaviour at the bonfire in Drury-lane, whither he came by mere accident, for aught appeared to the contrary." Sir M. Foster, Disc. 215.

"It is not equally clear how the rule," [that all are principals in treason] "with respect to the course of trial, would be in the case of a constructive levying of war, namely, in regard to such persons as accidentally join others in the commission of unlawful and traitorous acts, but without any knowledge of their previous traitorous design, which previous design alone constitutes such acts to be high-treason. That such an aiding and supporting in the very act of rebellion does make the parties guilty of high-treason, notwithstanding their ignorance of the treasonable intent, is clear. This was expressly determined in the case of Purchase. The three dissenting judges in that case grounded their opinion on the consideration that it was not directly found that he aided and assisted the said traitors, though they agreed that the mob were continuing their act of trea-

A Copy of the SPECIAL VERDICT in the Case of GEORGE PURCHASE, tried for High Treason, in levying War against the Queen, under Pretence of pulling down Meeting-Houses, 9 Anne, 1710, as it was drawn up for the Consideration of all the Judges.

Midd. ss. Memorand' qd ad Session' Dnæ Rnæ de Oier et Terminer tent' pro com' Midd' apud Westm' in com' præd' die Martis undecimo die Aprilis anno rni Dnæ nræ Annæ, &c. nono coram, &c. præsentat' existit qd Georgius Purchase nup' de paroch' Sci Clement' Dacor' in com' Midd' Lab' timorem Dei in corde suo non hens nec debm ligeanc' suæ ponderans sed instigatione diabolica motus et seductus cordialem dilecoon' et veram debit' et nralem obedienc' quas veri et fideles subdit' serenissimæ et illustrissimæ Principis Dnæ nræ Annæ Dei gra' Magn' Britanniæ Franciæ et Hiberniæ Rnæ Fidei Defens', &c. erga ipam Dnam Rnam gererent et de jure gerere tenent' penitus subtrahens ac machinans ac totis viribus suis intendens pacem et coem tranquillitat' hujus Rni pturbare primo die Martii anno rni Dnæ Nræ Rnæ octavo apud præd' paroch' Sci Clement' Dacor' in com' præd' proditorie compassavit imaginat' fuit et intendebat guerram rebellion' et insurrecoon' contra dcam Dnam Rnam infra hoc Regnum Magnæ Britanniæ levare et suscitare Et ad easdem pdicon' imaginacon' et intencon' suas præd' perimplend' et ad effem redigend' idm Georgius Purchase præd' primo die Martii anno octavo supdico vi et armis, &c. apud poch' Sci Clement' Dacor' in com' præd' contra dcam Dnam Rnam veram et indubitat' Dnam suam cum multitudine gentium jur' præd' ignot' ad numerum quingent' peon' modo guerrino armat' et arraiat' videlt gladiis baculis et fustibus et al' armis tam offensivis qm defensivis illicite et pditorie adtunc et ibm assemblat' et congregat' guerram publicam contra dcam Dnam Rnam pditorie paravit ordinavit et levavit contra ligeanc' suæ debm contra pacem dcæ Dnæ Rnæ nunc coron' et dignitat' suas, &c. Necnon contra form' Statut' in simili casu edit' et provis' per quod præcept' est vic' com' præd' qd non omitt', &c. quin caperet præfat' Georgium Purchase si, &c. ad respond', &c. Qd quidem indicament' præfat' justic' dcæ Dnæ Rnæ per lras patent' ipius Dnæ Rnæ sub magno Sigillo suo ut præfert' confect' postea scilt ad deliberacon' gaol' Dnæ Rnæ de Newgate tent' pro eom' Midd' præd' apud le Justice-hall in le Old Bailey in suburbiis civit' Londen' die Lunæ decimo septimo die Aprilis anno rni dcæ Dnæ Annæ Rnæ Magn' Britanniæ, &c. nono supdico coram Samuel' Garrard Bar' Major' civit' Lond' Thoma Parker mil' capital' justic' Dnæ Rnæ ad plita coram ipa Rna tenend' assign' Edro Ward mil' capital' baron' accii dcæ Dnæ Rnæ Robto Tracy ar' un' justic' dcæ Dnæ Rnæ de Banco Thoma Bury mil' un' baron' accii dcæ Dnæ Rnæ Rico Levett mil' Willo Withers mil' aldris civit' Londen' Rico Richardson ar' un' servien' ad legem ac al' sociis suis justic' dcæ Dnæ Rnæ ad gaolam ipius Dnæ Rnæ de Newgate de prisonar' in eadem existen' deliberat' assign' per manus suas propr' deliberaver' hic in Cur' de Recordo in form' juris terminand', &c. Et superinde ad præd' deliberacon' gaol' dcæ Dnæ Rnæ de Newgate tent' pro' com' præd' apud Justice-hall præd' doo die Lunæ decimo septimo die Aprilis anno nono supdco coram præfat' justic' dcæ Dnæ Rnæ ult' noiat et al' sociis præd' ven' præd' Georgius Purchase sub custod' Rici Hoare mil' et Thomæ Dunch mil' vic' com' præd' (in custod' cujus in gaola de Newgate præd' pantea ex causa præd' commiss' fuit) ad bar' hic duct' in propr' person' sua qui committitur præfat' vic', &c. Et statim de alt' prodicon' præd' in indicament' præd' superius spificat ei superius impoit allequat' qualit' se velit inde acquietari idm Georgius Purchase dicit qd ipe non est inde culpabil' et inde de bono et malo ponit se super priam Ideo immediate ven' inde jur' coram præfat' justic' dcæ Dnæ Rnæ ult' noiat et al' sociis suis hic, &c. per quos, &c. Et qui, &c. ad recogn', &c. Et jur' juræ illius per præfat' vic' ad hoc impannellat' scilt Thomas Sutton Johes Furnes Johes Parsons Josephus Parsons Willus Hargrave Johes Meard Edrus Boswell Robtus Breakspear Ricus Beatknife Ricus Hazzard Francus Higgins et Humfrus Newman exact' ven' qui ad veritat' de et sup' præmiss' præd' dicend' elect' triat' et jurat' dicunt super sacrm suu' qd primo die Martii anno regni Dnæ Annæ nunc Rnæ Magn' Britanniæ, &c. octavo multitudo gentiu' et magnus concursus popli ad numeru' quingent' person' modo guerrino armat' et arraiat' videlt gladiis baculis et fustibus et aliis armis tam offensivis qm defensivis apud paroch' Sci Clement' Dacor' in com' Midd' illicite et proditorie assemblat' et congregat' fuit sub colore et prætextu diruend' et spoliand' domos vocat' "Meeting-houses," pro assemblacone pretestan' subditor' Dnæ Rnæ dissentien' ab Eccliæ Anglican' pro divin' cultu allocat' et approbat' scdm direccon' cujusdm Act' in Parliamento Dni Willi et Dnæ Mariæ nup' Regis et Reginæ Angl', &c. anno rni sui primo fact' intitlat' "An Act for exempting their majesties Protestant subjects dissenting from the Church of England from the penalties of certain laws;" et cum intencon' ad

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son when he joined them. The same doctrine was holden in the case of the earl of Southampton, and those who lent their assistance to Essex's rebellion; and also by a majority of the judges in the cases of Appletree and Latimer, in the 20 Car. 2. But in each of these cases those who were actually privy to the design, and took a principal part in the very acts of treason, were indicted and convicted at the same time. Yet it must be considered that in this as in all other cases grounded in conspiracy, where several persons take the same or different parts all tending to the same end, that of itself is *primâ facie* evidence that they all acted with the same design." East's Crown Law, chap. 2, sect. 39. See, too, the quotation from Mr. East, p. 606, of this volume.

eosdm domos dirusnd' et speliand' qdq; diverse humoi domus in vico vocat' "Fetter-lane," et in quodm loco vocat' "Lincoln's-inn-fields," et aliis locis in com' Midd' per populu' sic ut prefert' assemblat' et congregat' spoliat' fuer' et subsellia Angce "Seats," et rostra Angce "Pulpits," et al' material' eisdm domibus spectan' dirut et in apertis locis infra com' predd' combuit' et cum igne consumpt' fuer' populo ill' adtunc magnope exultante vociferante et acclamante Et jur' predd' ulterius dicunt sup' sacrm suum qd magna pars eardm personar' ad numeru' trecent' person' de concursu popul' ill' qui sic ut prefert' predeam domu' in predd' loco vocat' "Lincoln's-inn-fields" spoliassent et material' inde combussissent et cum igne consumpsissent per quendm Daniel' Dammaree duct' abinde erga quendam vicu' vocat' "Drury-lane," in com' predd' progressi fuer' exultantes et clamantes qd ipi oes humoi domos protestan' dissentien' ab Ecclia Anglican' pro assemblacon' in eisdm pro divino cultu sic ut prefert' allocat' et approbat' diruerent et prosternerent qdq; in progression' sua predd' int' eos adtunc agitat' fuit qm domu' humoi demor' proxime dirnerent et spoliarent aliquibus cor' adtunc sociis suis proponen' prostracon' et spoliacon' cujusdm homoi domus in vico vocat' "Wild-street," in com' predd' situat' existen' aliis vero eor' prostracon' et spoliacon' altius humoi domus situat' in vico predd' vocat' "Drury-lane," pro eo qd predd' domus situat' in vico predd' vocat' "Wild-street," pervilis et nullius valor' fuit et domus ill' situat' in vico predd' vocat' "Drury-lane," maxime estimabilior super quo inter eos agreat' fuit qd ipi dcam domu' situat' in vico predd' vocat' "Drury-lane," proxime diruerent et spoliarent et superinde ad vicu' ill' sub ductu prefat' Danielis Dammaree (eodm Daniele populu' ill' ad eundm insequendum adtunc maxime animante et incitante) progressi fuer' exultantes et clamantes "Huzza! High Church and Sacheverell!" et declarantes qd ipi oes domos protestan' dissentien' ab Ecclia Anglican' pro divino cultu sic ut prefert' allocat' dirnerent et predd' domu' in vico predd' vocat' "Drury-lane," adtunc freger' et spoliaver' et subsellia rostrum et al' material' ad inde spectan' in publico vico ibm adtunc protuler' ad comburend' et cum igne postea in eodm publico vico ac eodm modo quo eastra consumpser'. Et jur' predd' ultius dicunt sup' sacrm suu' qd dum personse predd' sic ut prefert' assemblat' et congregat' material' domus ill' in vico predd' vocat' "Drury-lane," comburebant idm Georgius Purchase in indicament' predict' menconat' ibm advenit et popul' ill' cum gladio suo extract' adtunc defendebat et ad material' domus ill' comburend' eos maxime animabat sed idm Georgius Purchase ante tempus ill' co' popul' predd' non fuit presens et adtunc multu' potus fuit. Et jur' predd' ultius dicunt sup' sacrm suu' predd' qd satellitibus Dnse Rnse per mandatu ejusdm Dnse Rnse concursu' populi predd' dissipare et insurrecon' ill' supprimere in vic' predd' vocat' "Drury-lane," adtunc et ibm advenientibus idm Georgius Purchase popul' ill' sic ut prefert' material' domus predd' ibm comburent' satellit' ill' repugnare, adtunc et ibm incitabat et in et sup' capitan' satellitiu' predd' cum gladio suo extract' insult' fecit et sepal' eques satellitiu' ill' cum gladio suo predd' percussit et per quendm adtunc et ibm presen' admonitus existens qd quicunq; satellit' Dnse Rnse repugnat person' etiam ipius Dnse Rnse repugnat adtunc et ibm respondendo dixit, "Are you an enemy to Sacheverell?". Qdq; predd' Georgius Purchase anteivit Angce "advanced before" populu' predd' eundm Georgiu' insequen' contra satellit' predd' duxit vociferans et clamans his verbis sequen' videlt "I am for High Church and Sacheverell; come on, boys, I will lose my life in the cause, and will fight the best of 'em." Et jur' predd' ultius dicunt sup' sacrm' suu' predd' qd generalis exclamacon populi predd' ad eia separal' loca predd' dum separal' domos predd' sic ut prefert' spoliaver' et material' inde combusser' universalit' fuit "High Church and Sacheverell;" sed utru' sup' tota matia predd' per jur' predd' in form' predd' compert' videbit' justic' et cur' hic qd predict' Georgius Purchase culpabilis sit de alt' prodicon' predd' in indicament' predd' spificat' modo et form' prout per indicament' ill' suppoit' necne jur' predd' penitus ignorant' et inde petunt advisament' justic' et cur' hic. Et si super tota matia predd' per jur' predd' in form' predd' compert' videbit' justic' et cur' hic qd predd' Georgius Purchase est culpabilis de alt' prodicon' predd' in indicament' predd' spificat' modo et form' prout per indicament' ill' suppoit'. Tunc iidm jur' dicunt super sacrm suu' qd predd' Georgius Purchase est culpabilis de alt' prodicon' predd' in indicament' predd' spificat' modo et form' prout per indicament' predd' versus eu' suppoit' qdq; ipe tempore alt' prodicon' predd' null' huit bon' seu catalla terr' sive tenta ad notic' jur' predd' sed si super tota materia predd' per jur' predd' in form' predd' compert' videbit' justic' et cur' hic qd predd' Georgius Purchase non est culpabilis de alt' prodicon' predd' in indicament' predd' spificat' modo et form' prout per indicament' ill' versus eu' suppoit'. Tunc iidm jur' dicunt super sacrm suu' qd predd' Georgius Purchase non est culpabilis de alt' prodicon' predd' in indicament' predd' spificat' modo et form' prout ipe idm Georgius pro se plitando allegavit nec se occone predd' unqm retraxit. Et quia prefat' justic' et cur' hic de judicio suo de et sup' premiss' predd' reddend' nondu' advisat'. Dies inde dat' est prefat' Georgio Purchase usq; prox' gaol' delibacon' de Newgate predd' pro com' Midd' predd' tenend' in gaola predd' sub custod' vic' com' predd' interim salvo custodiend' &c. de judicio suo de et sup' premiss' predd' audiend'. Eo qd prefat' justic' et cur' hic inde nondu' &c.

Middlesex to wit. Be it remembered, That at the sessions of our sovereign lady the queen, of Oyer and Terminer, holden for the county of Middlesex, at Westminster, in the county aforesaid, upon Tuesday the 11th day of April,

in the 9th year of the reign of our said sovereign lady queen Anne, &c. before, &c. it is presented, That George Purchase, late of the parish of St. Clement Danes, in the county of Middlesex, labourer, not having the fear of God in his heart, nor weighing the duty of his allegiance, but being moved and seduced by the instigation of the devil, entirely withdrawing the cordial love, and the true, due and natural obedience, which true and faithful subjects of our most serene and illustrious princess, our sovereign lady Anne, by the grace of God, of Great Britain, France and Ireland, queen, defender of the faith, &c. ought, and of right are bound to bear towards her our said sovereign lady the queen, and conspiring, and with all his strength intending to disturb the peace and common tranquillity of this kingdom, the first day of March, in the eighth year of the reign of our said lady the queen, in the parish of St. Clement Danes aforesaid, in the county aforesaid, did traitorously compass, imagine, and intend to levy and raise war, rebellion and insurrection, against our said lady the queen, within this kingdom of Great Britain; and to complete and effect his treasonable imaginations and intentions, he the said George Purchase, on the said first day of March, in the eighth year aforesaid, with force and arms, &c. in the said parish of St. Clement Danes, in the county aforesaid, against our said lady the queen, his true and undoubted sovereign, with a multitude of people, to the said jurors unknown, to the number of 500 persons, armed and arrayed in a warlike manner, to wit, with swords, staffs, and clubs, and other weapons, as well offensive as defensive, unlawfully and traitorously then and there assembled, and gathered together, did traitorously ordain, prepare, and levy open war against our said lady the queen, against the duty of his allegiance, against the peace of our said lady the queen that now is, her crown and dignity, and against the form of the statute in that case made and provided.

Wherefore the sheriff of the county aforesaid was commanded, that he should not omit, &c. but that he should take the aforesaid George Purchase, if, &c. to answer, &c. which said indictment, the said justices of our said lady the queen, appointed by the letters patent of our said lady the queen, under her great seal as aforesaid, afterwards, to wit, at the gaol-delivery of our lady the queen, of Newgate, holden for the county of Middlesex aforesaid, at Justice-hall in the Old Bailey, in the suburbs of the city of London, on Monday the 17th day of April, in the aforesaid 9th year of the reign of our said lady Anne, queen of Great Britain, &c. before sir Samuel Garrard, baronet, lord mayor of the city of London, sir Thomas Parker, knight, lord chief justice of our lady the queen, assigned to hold pleas before the queen herself, sir Edward Ward, knight, lord chief baron of the Exchequer of our said lady the queen, Robert Tracy, esquire, one of the justices of the bench of our said lady the queen, sir Thomas Bury, knight, one of the barons of the Exchequer of our said lady the queen, sir Richard Levett, knight, sir William Withers, knight, aldermen of the city of London, Richard Richardson, esquire, one of the serjeants at law, and others their companions, justices of our said lady the queen, assigned to deliver the gaol of our said lady the queen, of Newgate, of the prisoners being in the same, did deliver here with their own proper hands, in the court of record, in form of law, to be determined, &c. and thereupon, at the said delivery of the gaol of our said lady the queen, of Newgate, holden for the said county, at Justice-hall aforesaid, the said Monday the 17th day of April, in the 9th year aforesaid, before the said justices of our said lady the queen last named, and others their companions aforesaid, the said George Purchase came under the custody of sir Richard Hoare, knight, and sir Thomas Dunch, knight, sheriff of the county aforesaid, (to whose custody, for the cause aforesaid, he was before committed to the said gaol of Newgate) being brought to the bar here in his own proper person, who is committed to the aforesaid sheriff, &c. and immediately being asked concerning the high treason aforesaid, in the said indictment above specified, charged upon him as above, in what manner he would acquit himself thereof, the said George Purchase saith, that he is not guilty thereof, and of the good and bad thereof putteth himself upon his country.* Therefore let a jury immediately come before the said justices of our said lady the queen last mentioned, and others their companions here, &c. by whom, &c. and who, &c. to take cognizance, &c. and the jurors of that jury by the said sheriff for this purpose impannelled, that is to say, Thomas Sutton, John Furness, John Parsons, Joseph Parsons, William Hargrave, John Meard, Edward Boswell, Robert Breakspear, Richard Beatknife, Richard Hazzard, Francis Higgins, and Humphry Newman, being called, appeared, who being chosen, tried, and sworn to speak the truth of and upon the premisses aforesaid, upon their oaths do say:

That upon the first day of March, in the eighth year of the reign of our lady Anne, queen of Great Britain, &c. that now is, a multitude of men, and a great concourse of people, to the number of 500 persons, armed and arrayed in a warlike manner, to wit, with swords, staffs, clubs, and other arms, as well offensive as defensive, did unlawfully and traitorously assemble and meet together in the parish of St. Clement Danes, in the county of Middlesex, under colour and pretence of pulling down and rifling the houses called meeting-houses, allowed and approved for the assembling of the Protestant subjects of our lady the queen, dissenting from the Church of England, to perform divine worship, according to the direction of an act made in the parliament

* N. B. No issue joined. See 4 Burr. 2085, R. *v.* Royce, and Leach's Hawkins's Pleas of the Crown, book 2, c. 38, s. 3. See also the Case of Major Oneby, A. D. 1723.

of our lord and lady William and Mary, late king and queen of England, &c. in the first year of their reign, intituled, 'An Act for exempting their majesties Protestant subjects 'dissenting from the Church of England from 'the penalties of certain laws,' and with intent to pull down and rifle the same houses; and that several such houses in a street called Fetter-lane, and in a certain place called Lincoln's-inn-fields, and in other places in the county of Middlesex, were rifled by the people so as aforesaid assembled and gathered together; and that the seats and pulpits, and other materials belonging to the said houses, were pulled down, and burnt, and consumed with fire, in open places within the said county, the people there present greatly rejoicing, shouting, and hallooing: and the said jurors, upon their oaths, do further say, that a great part of the said persons, to the number of 300 persons of that concourse of people, who, as aforesaid, had rifled the said house, in the place aforesaid called Lincoln's-inn-fields, and had burnt and destroyed with fire the materials therein, being led from thence by one Daniel Dammaree, proceeded towards a certain street, in the county aforesaid, called Drury-lane, hallooing and crying out, that they would pull down and level with the ground all the said houses allowed and approved as aforesaid for the assembling of the Protestants dissenting from the Church of England, for divine worship; and that in their march aforesaid, it was then debated among them, which house of the said houses they should next pull down and rifle, some of them, at that time, proposing to their fellows the pulling down and rifling a certain house of that kind, situate and being in a street, called Wild-street, in the county aforesaid; but others advising the pulling down and rifling another house of that kind, situate in the street aforesaid, called Drury-lane, for this reason, that the said house, situate in the street aforesaid, called Wild-street, was mean, and of no value, and that house situate in the street aforesaid, called Drury-lane, was very considerable; whereupon, it was agreed between them, that they would next pull down and rifle the said house, situate in the street aforesaid, called Drury-lane; and thereupon they went to the said street, being led by the said Daniel Dammaree, (the said Daniel Dammaree at that time greatly exciting and encouraging the people to follow him) shouting, and crying, Huzza! High Church and Sacheverell! and declaring that they would pull down all the houses allowed, as aforesaid, to the Protestants dissenting from the Church of England, for religious worship; and did then break and rifle the said house, in the street aforesaid, called Drury-lane, and did then bring out the seats, pulpit, and other materials thereto belonging, into the public street, there to be burnt, and afterwards did consume them with fire in the same public street, and in the same manner as the rest were consumed. And the jurors aforesaid, upon their oaths, further say, that whilst the said persons assembled and gathered together as aforesaid, did burn the materials of that house in the street aforesaid, called Drury-lane, the said George Purchase, in the indictment aforesaid mentioned, came there, and with his sword drawn did then defend the said people, and did greatly encourage them to burn the materials of the said house; but the said George Purchase, before that time, was not present with the said people, and at that time was much in drink: and the said jurors, upon their oaths aforesaid, further say, that the guards of our sovereign lady the queen, then and there coming by the command of our said lady the queen, to disperse the concourse of people aforesaid, and to suppress that insurrection in the said street called Drury-lane, the said George Purchase did then and there incite the people, then, as aforesaid, burning the materials of the said house, to resist the said guards, and did make an assault in and upon the captain of the said guards, with his sword drawn, and with his said sword did strike several horses of the said guards, and being admonished by one then and there present, that whoever resisteth the guards of our lady the queen resisteth also the person of our said lady the queen; he then and there, by way of answer, said, Are you an enemy to Sacheverell? And that the said George Purchase advanced before the said people following, he the said George led them against the guards aforesaid, hallooing, and crying out in the following words, that is to say, I am for High-Church and Sacheverell; come on, boys; I will lose my life in the cause, and will fight the best of them: and the jurors aforesaid, upon their said oaths, do further say, that the general cry of the people aforesaid, at all the several places aforesaid, whilst they rifled the said several houses, as is before set forth, and burnt the materials of the same, was universally, High-Church and Sacheverell.

But whether, upon the whole matter aforesaid, found by the said jurors in form aforesaid, it shall appear to the justices, and the court here, that the aforesaid George Purchase be guilty of the high-treason aforesaid, in the said indictment specified, in manner and form as by the said indictment is supposed, or not, the jurors aforesaid are entirely ignorant, and therefore desire the advice of the justices, and of the court here; and if, upon the whole matter aforesaid, found by the said jurors, in form aforesaid, it shall appear to the justices, and to the court here, that the said George Purchase is guilty of the high-treason aforesaid, in the said indictment specified, in manner and form as by the said indictment is supposed, then the said jurors, upon their oaths, do say, that the said George Purchase is Guilty of the high-treason aforesaid, in the said indictment specified, in manner and form as by the said indictment against him is supposed; and that he, at the time of the high-treason aforesaid, had no goods or chattels, lands or tenements,

to the knowledge of the jurors aforesaid; but if, upon the whole matter aforesaid, found by the said jurors in form aforesaid, it shall appear to the justices, and to the court here, that the said George Purchase is not guilty of the high-treason aforesaid, in the indictment aforesaid specified, in manner and form as by the said indictment against him is supposed; then the said jurors do say, upon their oaths aforesaid, that he the said George Purchase is not guilty of the high-treason aforesaid, in the indictment aforesaid specified, in manner and form as he the said George Purchase, for himself, by pleading, hath alledged; nor did he ever withdraw himself for the occasion aforesaid: and because the said justices and this court are not yet advised of giving their judgments of and upon the premisses, therefore a day is given to the said George Purchase, to the next gaol-delivery of Newgate aforesaid, for the county of Middlesex aforesaid, to be detained in the gaol aforesaid, under the custody of the sheriff aforesaid, in the mean time, safely to be kept, &c. to hear their judgment of and upon the premises aforesaid, because the said justices and this court are not yet, &c.

The following is the ARGUMENT of the CHIEF JUSTICE, written with great clearness of stile, and strength of reason. [*Former Edition.*]

As to Dammaree and others, who pulled down or rifled meeting-houses, it is the unanimous opinion of all the judges, that they were guilty of high-treason; and the species of that treason is, the levying war against the queen.

For, when a multitude is assembled, and force used, not for any private end or revenge, but upon a pretence which is public and general, it has in all ages been adjudged a levying war against the crown, and high-treason.

Several cases have been at several times, in the reigns of Henry 8, queen Elizabeth, king Charles 1, and king Charles 2, under the consideration of the judges; and particularly so, if a multitude assembled with an intent,

And actually with force attempt,
To remove evil counsellors,
Surprize a privy-counsellor,
Lay violent hands on a magistrate,
Expulse strangers,
Alter laws,
Make reformation,
Set price on victuals,
Inhance salaries or wages,
Pull down inclosures. [If the design be general;* and not only for a private revenge to redress a private injury.]
Break prisons generally,
Pull down bawdy-houses.

And in all these cases the persons concerned therein, though they had no ill intention against the person of the king or queen, have been held guilty of levying war against the king or queen.† For these insurrections are of a public nature, and invasions of the royal authority.‡ And this insurrection, with intent to pull down meeting-houses tolerated by law, is of a more public nature and concern than many of those, and a higher violation of the public peace; and therefore is, in the eye of the law, rebellion, and levying war against her majesty.

As to the particular case of Purchase, the prisoner at the bar, three of the judges, my lord chief-justice Trevor, my brother Powell, and brother Price, are of opinion, that as this verdict is found, he is not guilty of high-treason.

But all the rest of the judges are of opinion, that upon this verdict he is guilty of high-treason.

For this insurrection, with an intent to pull down the meeting-houses, being high-treason, that is, being a rebellion, and in the eye of the law a levying war against her majesty;

It appears, that the design of this rebellion was to pull down and rifle meeting-houses; that the manner of executing that design was by pulling down the pulpits, pews, and other materials of the meeting-houses, and burning them with great triumph in public places; and when they had burnt the materials of one, then to go on to another.

It appears, that when Purchase came to the persons engaged in this design, they were still continued assembled upon the same design; and though the pulling down of the meeting-house in Drury-lane were over, it only had the preference of that in Wild-street, their whole work of pulling down meeting-houses was not over, the whole design of this rebellion was not yet accomplished, but they were proceeding in the method in which they had begun, and were burning the materials of this meeting-house in Drury-lane, and when that was done, they would be at liberty to go on to another, and so on till all should be finished, and all the meeting-houses destroyed: so that their rebellion was then continuing.

Purchase comes up to them, joins them that were thus engaged in an act of rebellion; not only encourages them to burn the pews and pulpit, but draws his sword in defence of these rebels, then, in the eye of the law, in war against their queen: and when the guards came, by her majesty's special command, to disperse them, that is, to stop this rebellion,

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* See Luders's observations on the doctrine of generality or universality as stated here, and by Foster and Blackstone. Considerations on the Law of High Treason, &c. ch. 2, p. 88.

† See Leach's Hawkins's Pleas of the Crown, book 1, c. 17, s. 25.

‡ See Luders p. 18. And qu. of the Royal Authority thus alleged to be invaded. See also the Note to the summing up in Dammaree's Case *ante*, and Luders as there cited.

and put an end to this war, he actually engages the guards, makes a pass at the captain of the guards, and pokes at other of their horses; and so did all in his power to keep this rebellion on foot, in opposition to her majesty's forces: and when a person joins himself to those engaged in rebellion, and fights in defence of them, while they are in the act of rebellion, this we think, involves him in the guilt of this rebellion; and, by thus doing, he is one of those that wages war against the queen.

It is not indeed found in express words by the verdict, that he aided and assisted these rebels, but it is found in effect; for it is found that he defended them with his drawn sword, and he fought against the guards that were sent to disperse them: nay, here is more found than aid and assistance implies; for a man is properly said to be aiding and assisting those that make war, if he supply them with arms or provisions, or otherwise contributes to their assistance, though himself is at a distance; but here, with sword in hand, he is found actually to attack the guards, and so himself joins in making war, and is more properly an actor, than an aider or assister.

It is not found in the verdict, that he knew of the intent to pull down meeting-houses, and we take it not to be necessary.

1. Here is matter found, that carried a violent presumption that he did know it.

The notoriety of the pulling down the meeting-houses in so public a manner; his joining to such a tumultuous assembly; his encouraging them to burn the materials; his eagerness in defending this assembly; his using the word, which appeared to be the watch-word at all the several meeting-houses, High-Church and Sacheverell, declaring himself to be for High-Church and Sacheverell, which, if it had no other meaning, was yet the cant word of these rebels; his taking upon him so far the knowledge of the cause, that he declared he would lose his life for it; and using that as an inducement, when he called on the people that were engaged in the cause of pulling down meeting-houses, to follow him against the guards, seem very strongly to import his knowledge.

2. We are of opinion, that if a man knowingly join with others in breaking the peace, and actually fights the guards in their defence; if in that breach of the peace they were rebels, he is so too, whether he knew them to be so or not.

In rebellions it is frequent that few are let into the real design, but yet all that join in it are guilty of the rebellion.*

It is not for a man to fight for persons actually in rebellion, and say, he meant indeed to break the peace, but did not design high treason; he should have thought of that before he joined those he saw engaged in an unlawful act; if he will knowingly break and contemn the laws, he must be content to suffer the same punishment with those he had joined in breaking them.

And this is no new point; this was the opinion of all the judges of England, in the case of the earl of Essex, and earl of Southampton, in queen Elizabeth's time; the earl of Essex having a design to remove some of the counsellors from about the queen, and marching with several armed men for that purpose: all the judges held, that all that went with him out of his house, and so adhered to the earl of Essex, who was guilty of high treason, were themselves guilty of high treason too, though they knew not his intent.

Purchase received her majesty's most gracious pardon.

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* "Joining with rebels," (says Mr. East) "freely and voluntarily, in any act of rebellion, is levying war against the king; and this too though the party was not privy to their intent. This was holden in the case of the earl of Southampton, and again in Purchase's case in 1710. But yet it seems necessary in this case, either that the party joining with rebels and ignorant of their intent at the time, should do some deliberate act towards the execution of their design, or else should be found to have aided and assisted those who did. Therefore, in the cases of Green and Bedell, who with others were indicted for levying war and pulling down bawdy-houses and opening prisons, it being only found that they were present, and not finding any particular act of force committed by them, or that they were aiding or assisting to the rest, which is a fact that must be found by the jury, and cannot be implied, they were discharged. And if the acts of those who suddenly join an insurrection, being ignorant of their design, appear to be more inconsiderate than wilful or mischievous, such as throwing up their hats, or hallooing with the mob, this will fall under the same lenient consideration." Pleas of the Crown, chap. 2, sect. 15.

446. Proceedings against WILLIAM WHISTON, for publishing divers Tenets contrary to the Established Religion: 10 ANNE, A. D. 1711.

[The following Address, and Opinions, being authentic, are, it is conceived, of importance enough to give them a place in this Collection. The Address was presented by the Lord Bishop of Litchfield and Coventry,* and the Lord Bishop of Ely,† April 17, 1711. *Former Edition.*]

To the QUEEN's most Excellent Majesty,

The Humble ADDRESS of the Archbishop and Bishops of the Province of Canterbury, in Convocation assembled.

May it please your Majesty,

WHEREAS one William Whiston, a presbyter of the Church of England, and late professor of mathematics in the University of Cambridge, who was, in October last, expelled the said University, for asserting and spreading abroad divers tenets, contrary to religion received and established by public authority in this realm, has, since that time, and a little before the sitting of this present convocation, printed and published an Historical Preface to other writings of the same pernicious design, intended for the press, in which he has advanced several damnable and blasphemous assertions against the doctrine and worship of the ever-blessed Trinity: expressly contradicting the two fundamental articles of the Nicene creed; and defaming the whole Athanasian ;‡ and has had the confidence to inscribe and direct the said printed Preface to the convocation now assembled.

And whereas we take ourselves to be both bound in duty to God, and to his holy truths, and in obedience to your majesty's pious intentions signified to us with your gracious licence, to repress the said blasphemy: and also obliged in vindication of our firm adherence to the true faith, and for the preservation of the same in the members of our communion, to call the said William Whiston before us, in order either to his amendment, or exclusion from the communion of the Church of England; but do yet find ourselves hindered from going on, by some doubts arising among ourselves concerning our power so to act and proceed:

For that the court of convocation being final, or the last resort, from which no appeal is provided by the statute made in the 25th year of Henry the eighth, chap. 19, it may seem to be doubtful how far a prosecution, without appeal to the crown, will be consistent with the statute made in the first year of queen Elizabeth, chap. 1, sect. 17, whereby all jurisdiction, and particularly for reformation of errors, heresies, and schisms, is united and annexed to the imperial crown of this realm; and also how far it will be consistent with the statute of Appeals, made in the 25th year of Henry 8, chap. 19, which, in the course of the appeals directed to be henceforth made, doth not mention convocation. May it please your most gracious majesty, out of your known zeal for the honour of God, and the good of his Church, to lay this case before your reverend judges, and others whom your majesty in your wisdom shall think fit, for their opinion, how far the convocation, as the law now stands, may proceed in examining, censuring, and condemning such tenets as are declared to be heresy by the laws of this realm; together with the authors and maintainers of them.

Upon this Address to the Queen, her Majesty was pleased to refer the whole to the Twelve Judges, and to her Attorney and Solicitor-General; who being several times assembled together, and debating the matter, came to the following Resolutions.

To the QUEEN's most Excellent Majesty.

May it please your Majesty;—In humble obedience to your majesty's royal command signified to your judges by the right honourable the lord keeper; we whose names are subscribed have considered the questions mentioned in the Address hereunto annexed, and are humbly of opinion, that since the statute of 23d of Henry 8, against citing out of the diocese, and those statutes of the 24th and 25

* The celebrated and excellent Hough. See the Case of Magdalen College, vol. 12, p. 1.

† Moore.

‡ "The account given of Athanasius's Creed, seems to me no-wise satisfactory; I wish we were well rid of it." Archbishop Tillotson's Letter to Bishop Burnet, published in the Life of the latter.

Of this so much litigated Creed, Swift in his Sermon on the Trinity, says, "Although it is useful for edification to those who understand it, yet, since it contains some nice and philosophical points which few people can comprehend, the bulk of mankind is obliged to believe no more than the Scripture doctrine, as I have delivered it; because that Creed was intended only as an answer to the Arians in their own way, who were very subtle disputers." The Council of Nice was held in the year 325: Athanasius died in 373: I believe it is now very generally agreed by those, who have studied the question, that the Athanasian Creed was not composed before the time of Hilarius, bishop of Arles, about the year 430.

years of the same reign, touching appeals, and as the law now stands, the convocation hath not any jurisdiction originally to cite before them any person for heresy, or any other spiritual offence, which according to the laws of the realm may be cited, censured, and punished in the respective ecclesiastical courts or jurisdictions of the archbishops, bishops, and other ordinaries; who, we conceive, have the proper judicature in those cases; and from whom and whose courts the parties accused may have their appeals; the last resort wherein is lodged in the crown. In which statute for citing out of the diocese, and in the others, as far as relates to appeals for such offences, no notice is taken of the convocation, either as to jurisdiction, or appeals. Nor doth it any way appear to us in whom the pretended judiciary power of a convocation, either before or since the said statutes, (if any such they ever had) resided; whether in the whole body of the convocation, or in part. But it is plain by the first statute, that the archbishop's jurisdiction, even in case of heresy, is bounded so that he cannot proceed against such offenders within any other diocese than his own, without the consent, or in the default of the diocesan bishops. All which statutes being made for the ease and benefit of the subjects, they cannot, as we humbly conceive, be deprived of the benefit of them by any pretence of jurisdiction in the convocation; from which we cannot find or be informed of any instance of appeal. Nor have any judicial precedents or authorities for convening or censuring of such offenders in any convocation since those statutes, or the reformation (which is now near 180 years), appeared unto us. And if such power should be allowed to the convocation, we conceive it would invade the ordinary jurisdiction of the archbishops and bishops; which we conceive are preserved by the act of parliament made in the 17th year of the reign of his late majesty king Charles the first, chap. 11, and by another made in the 13th year of king Charles the second, chap. 12, and by the act made the 29th Car. 2, chap. 9, which took away the writ De Heretico Comburendo; in none of which any mention is made of the convocation. And by the Bill of Rights, 1 Will. & Mar. it is enacted, That the commission for erecting the late court of commission for ecclesiastical causes, and all other commissions and courts of like nature, are illegal and pernicious. But we conceive that heretical tenets and opinions may be examined and condemned in convocation, authorized by royal licence, without convening the authors or maintainers of them. All which we most humbly submit to your royal majesty's great wisdom.

May 5th, 1711.

EDW. WARD, *(a)* JO. BLENCOWE.
ROBERT DORMER, *(b)* S. LOVELL, *(c)*

(a) Lord Chief Baron of the Exchequer.
(b) A Justice of the Common Pleas.
(c) A Baron of the Exchequer.

The other PAPER here follows.

May it please your majesty;—In obedience to your majesty's commands, signified to us by the right honourable the lord-keeper of the great seal, in relation to the humble Address of the archbishop and bishops of the province of Canterbury, in convocation assembled, hereunto annexed; we whose names are hereunto subscribed, have taken into consideration the doubts and questions therein stated.

And after conference with the rest of the judges, we are humbly of opinion, that of common right there lies an appeal from all ecclesiastical courts in England to your majesty, in virtue of your supremacy in ecclesiastical affairs, whether the same be given by express words of any act of parliament, or not: And that no act of parliament has taken the same away. And consequently, that a prosecution in convocation, not excluding an appeal to your majesty, is not inconsistent with the statute of 1 Eliz. chap. 1, but reserves the supremacy entire.

As to the question proposed in the said Address, how far the convocation, as the law now stands, may proceed in examining, censuring, and condemning such tenets as are declared to be heresy, by the laws of this realm, together with the authors and maintainers of them, we understand it to import only these two things: Whether a jurisdiction to examine, censure, and condemn such tenets, and the authors and maintainers thereof, could ever be exercised in convocation? And if it could, whether it be taken away by any act of parliament?

And we humbly lay before your majesty, that all our lawbooks that speak of this subject, mentioning a jurisdiction in matters of heresy, and condemnation of heretics, as proper to be exercised in convocation both before and since the acts of parliament mentioned in the Address; and none of them that we find, making any doubt thereof; and we observe nothing in those, or any other acts of parliament, that we think has taken it away; We are humbly of opinion, that such jurisdiction, as the law now stands, may be exercised in convocation.

But this being a matter which, upon application for a prohibition, on behalf of the persons who shall be prosecuted, may come in judgment before such of us as have the honour to serve your majesty in places of judicature, we desire to be understood to give our present thoughts with a reserve of an entire freedom of altering our opinions, in case any records, or proceedings, which we are now strangers to, shall be laid before us, or any new considerations which have not occurred to us, be suggested by the parties, or their counsel, to convince us of our mistake.

T. PARKER, *(d)* RO. PRICE, *(f)*
L. POWYS, *(e)* E. NORTHEY, *(g)*

(d) Lord Chief Justice of the King's-bench.
(e) A Justice of the King's-bench.
(f) A Baron of the Exchequer.
(g) Attorney General.

T. Trevor, (*h*)
T. Bury, (*i*)
R. Eyre, (*k*)
Ro. Raymond, (*l*)
J. Powel, (*m*)
R. Tracy. (*n*)

Of the Proceedings against Whiston in the University of Cambridge, Mr. Frend has, in his 'Sequel to the account of the proceedings in the University of Cambridge against the Author of a Pamphlet entitled 'Peace and Union' given, from Whiston, the following abstract:

"On October 22, 1710, William Whiston was summoned by an esquire bedell to appear before the vice-chancellor on the afternoon of the next day. In obedience to this summons, he went with a friend to the vice-chancellor's lodge, when his friend not being permitted to accompany him farther, he was conducted into an upper room, in which were present the vice-chancellor, nine heads of colleges, and the university registrary. A book of sermons was immediately put into his hands, and he was required to own it; but, on his refusing to answer such questions, the university printer was sent for, who could, however, say nothing to the purpose, and no other witnesses were called, relating to this publication. The depositions of several members of the university were then read, stating, that in a lecture in one of the parish churches, Whiston had asserted, 'There was but one God; and that God the 'Father only was that one God; that the 'Father was in all the ancient and primitive 'creeds mentioned to be the only God; 'that the Son was indeed exalted above all 'creatures, and made a partaker of many 'divine excellencies and perfections; and as 'such he was to be worshipped with a sort or 'degree of divine worship.' Similar opinions were deposed also to have been advanced by him at a coffee-house, in a meeting of the ministers of the charity schools. To these depositions Whiston said nothing, requiring only time for his defence, and copies both of the depositions read to him, and the statute, which he was supposed to have offended; subjoining also a solemn address to the company, on the nature of Christian benevolence, and the certainty of its appearance one day before the tribunal of Christ, which most probably was looked upon by these guardians of religion as marks of his simplicity, and words without meaning. The copies of the statute and the depositions were readily granted to him; the request for time afforded matter of long debate, during which he had withdrawn; and on being finally called in, the ensuing Wednesday was appointed to him for farther proceedings. Receiving another summons to attend on Wednesday, he made his appearance again at the vice-chancellor's, 'but now in a lower parlour of the same lodge, 'none being present but his judges as before,' the absence of two former heads being compensated by the presence of others. They now put into his hands a paper of opinions, which they ordered him to retract on the Monday following, or to expect a rigorous execution of the statute. The Paper delivered was as follows:

"Positions published and spread about in the University of Cambridge by Mr. William Whiston, *contra religionem*, &c. Stat. Acad. 45.

"1. That the Father alone is the one God of the Christian religion, in opposition to the three divine persons, Father, Son, and Holy Ghost, being the one God of the Christian religion.—[Vid. Postcript throughout. Vid. Sermons and Essays, &c. p. 213, l. 19, to 23, p. 215, l. 3, 4, 5, 6, 7. l. 9, 10, 11, 26. to 30. Mr. Thackham's Depos. Mr. Hughes' Depos. Mr. Townsend, Mr. Macro, and Mr. Amyas depositions. Vid. Serm. and Essays, p. 276. l. 21, to p. 278. l. 6.]

"This position is contrary to the 1st, 2d, and 5th of the 39 articles, and to the Nicene and Athanasian creeds.

"2. That the creed commonly called the Creed of St. Athanasius, is a gross and antichristian innovation and corruption of the primitive purity and simplicity of the Christian faith among us.

"This position is contrary to the rubric before the said creed, and the 8th article.

"3. That the canon of the Scripture, the rule and guide of a Christian's faith and practice, is that contained in the last of the ecclesiastical canons, ordinarily stiled apostolical; which all along appears to have been the standard of the primitive church in this matter. I mean as including all the books we now own for canonical, and also the two epistles of St. Clement, and the constitutions of the apostles by St. Clement: to which the pastor of Hermas is to be added; as well as we have already added the apocalypse of St. John.

"That the Doctrine of the Apostles appears to be a sacred book of the New Testament, long lost to the Christian church.

"These two positions are contrary to the sixth of the 39 articles.

"Mr. Whiston undertakes to prove clearly, that the apostolical constitutions are the most sacred part of the canonical scriptures of the New Testament.

"Mr. Whiston asserts, that the doxology, current in all these latter ages, 'Glory be to

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(*h*) Lord Chief Justice of the Common Pleas.
(*i*) A Baron of the Exchequer.
(*k*) A Justice of the King's-bench.
(*l*) Solicitor General.
(*m*) As to him see several Cases in this Collection, particularly that of the Seven Bishops. "July 5, 1711. In the evening I went to Lord Treasurer, and among other company found a couple of judges with him, one of them Judge Powell, an old fellow with grey hairs, was the merriest old gentleman I ever saw, spoke pleasant things, and laughed and chuckled till he cried again." Swift's Journal to Stella.
(*n*) A Justice of the Common Pleas.

'the Father, and to the Son, and to the Holy Ghost,' was not the true Christian doxology.

"This position is against the doxology received and established in the public liturgy.

"Dated October 25, 1710.

"This paper was delivered to Mr. Whiston, the day and year above-written, by Mr. Vice-chancellor's order.—Witness my hand,

"ROBERT GROVE."

"Against this mode of proceeding, Whiston first read, and then delivered in a protest, stating his surprize, that they should not have conferred with him, as was formerly the usage, on his opinions; and that no one, through Christian charity, had endeavoured to convince him of his errors. Many on the contrary, attempted to undermine him; at one time, talking of him as a public enemy to be expelled by grace; at another time, to be prosecuted in the ecclesiastical courts, or at the assizes: then the opinion of counsel was taken on the propriety of convicting him of heresy, and expelling him by Lucas's statutes; and now a remote university statute was thought of, which could not, in the present instance, be applied with justice. This statute related to public sermons, and similar public acts and lectures before the university; but he had never preached before the university, nor performed divinity exercises; and the only lectures he had given, were mathematical. With respect to his sermons in the parish church, he conceived himself amenable only to the bishop of the diocese; and books published in London, and private discourses elsewhere, could not be punishable by this meeting, since the crimes must be done 'publicè docendo, tractando, vel defendendo,' in public and solemn sermons, lectures, or disputations, before the university. He complained also, that, in so important a business, the chancellor had not been consulted, and that he had been so privately convened and interrogated; and, saving therefore to himself the liberty of making farther objections to their proceedings, he summed up his protest in the following articles:

"1. That I am charged with breaking that 45th statute which I have been uncapable of breaking, because it only concerns such public university exercises as I have never performed.

"2. That the place where most of the words are pretended to have been spoken, St. Clement's church, is utterly out of the jurisdiction of the university, and so no ways within this statute.

"3. That the want of the specification of the time, or the too loose specification of it, renders most of the depositions of no value.

"4. That words charged at so great a distance of time, cannot be sworn to so particularly as is necessary to affect me.

"5. That words spoken in private conversation, or at a coffee-house, or (written) in a private letter, can no way be within this statute.

"6. That no books printed and published at London, can be within this statute.

"7. That I ought to have been convened publicly in the consistory, and evidence fairly there produced against me in an open court; and not privately in a chamber, been asked many ensnaring questions, with the exclusion of even a single friend, who was willing to have been there to assist and direct me.

"8. That any prior determination of the sense of this statute, before I have had counsel allowed me, or legal advice taken about its true extent and meaning, is of no force at all against me.

"And I desire and demand that I may have time given me, and counsel allowed me to argue the validity of these exceptions.

"*October* 25, 1710. W. WHISTON."

"Little attention was paid to this protest. The vice-chancellor gravely exhorted the protestant, under pain of condemnation on the following Monday, to leave his errors, and return to the Church of England; and perceiving, after a little time, that he began to draw some of the heads into farther arguing and reasoning about these matters, the vice-chancellor took one of the candles and conducted him out of the house.

"On the Sunday following, Whiston received a summons to attend a meeting of the vice-chancellors and heads on the next day; from which, at first, he determined to absent himself; but afterwards altering his mind, he appeared before the heads, now twelve in number; and being asked by the vice-chancellor to retract his errors, he read a protest to them against all their proceedings, which he desired might be entered upon the records of the university. He then took his leave; and the following act, afterwards made public, gives the determination of the meeting:

"*October* 30*th*, 1710.

"At a Meeting of Mr. Vice-chancellor, and the Heads of Colleges in the University of Cambridge, in the Vice-Chancellor's Chamber, in King's College, in the said University.

"Whereas it hath been proved before us, that William Whiston, master of arts, mathematic professor of this university, hath asserted and spread about in Cambridge, since the 19th day of April 1709, divers tenets against religion received and established by public authority in this realm, contrary to the 45th statute of this university; and whereas the said William Whiston being required and exhorted by Mr. Vice-chancellor, to confess and retract his error and temerity in so doing, did refuse to make any such confession and retractation; it is therefore agreed and resolved by us, the vice-chancellor, and heads of colleges, whose names are here underwritten, that the said William Whiston hath incurred the penalty of the foresaid statute, and that he be banished from this university according to the tenor of the same: C. Roderick, vice-chancellor; Joseph Ellys, Humf. Gower, Hen. James, S. Blithe, John Covel, Jo. Balderston, Gabr. Quadring,

Tho. Richardson, Ch. Ashton, Bardsey, Fisher, Edw. Lany. Unde venerabilis vir Dr. Roderick, dominus procancellarius, assidentibus et consentientibus Johanne Ellys milite, Doctore Gower, Doctore James, Doctore Blithe, Doctore Covel, Doctore Balderston, Doctore Quadring, Doctore Richardson, Doctore Ashton, Doctore Fisher, Doctore Lany, collegiorum præfectis, sententiam ferendo decrevit, declaravit, et pronunciavit prout sequitur. In the name of God, Amen. I Charles Roderick, vice-chancellor of this university, do decree, declare, and pronounce, that Mr. William Whiston, mathematic professor of this university, having asserted and spread abroad divers tenets contrary to religion received and established by public authority in this realm, hath incurred the penalty of the statute, and that he is banished from this university."

"Lata fuit hujusmodi sententia per dictum dominum procancellarium, præsente me Roberto Grove, not. pub. et almæ universitatis prædictæ registrario."

"The severity," says Mr. Frend, "with which Whiston was treated is easily accounted for. About that time the nation was, by Sacheverell's trial, alarmed with the cry of danger to the Constitution in Church and State; that bigot had received support from administration, and the Tories in general; and motions were made even in parliament, for the suppression of irreligion and impiety."

Whiston was succeeded in his professorship by the blind Saunderson, whom Mr. Frend denominates (I believe with the strictest truth) 'a profligate, and a contemner of all religion.'

In relation to Whiston's case, Burnet writes as follows:

"The convocation of the province of Canterbury was opened, the 25th of November, 1711, the same day in which the parliament met: And Atterbury was chosen prolocutor. Soon after, the queen sent a licence to the convocation, empowering them to enter upon such consultations, as the present state of the Church required, and particularly to consider of such matters, as she should lay before them; limiting them to a Quorum, that the archbishop of Canterbury [Tennison,] the bishop of London [Compton,] or the bishop of Bath and Wells [Hooper,] should be present, and agree to their resolutions. With this licence, there was a letter directed to the archbishop, in which the convocation was ordered, to lay before the queen an account of the late excessive growth of infidelity and heresy among us; and to consider how to redress abuses in excommunications; how rural deans might be made more effectual; how terriers might be made and preserved more exactly; and how the abuses in licences for marriage might be corrected.

"In this whole matter, neither the archbishop nor any of the bishops were so much as consulted with; and some things in the licence were new: The archbishop was not named the president of the convocation, as was usual in former licences; and in these, the archbishop's presence and consent alone was made necessary, except in case of sickness, and then the archbishop had named some bishops to preside, as his commissaries: And in that case, the convocation was limited to his commissaries, which still lodged the presidentship and the negative with the archbishop. This was according to the primitive pattern, to limit the clergy of a province to do nothing, without the consent of the metropolitan; but it was a thing new and unheard-of, to limit the convocation to any of their own body, who had no deputation from the archbishop. So a report of this being made, by a committee that was appointed to search the records, it was laid before the queen: And she sent us a message to let us know, that she did not intend, that those whom she had named to be of the Quorum, should either preside or have a negative upon our deliberations, though the contrary was plainly insinuated in the licence. The archbishop was so ill of the gout, that after our first meetings, he could come no more to us; so was the bishop of London: upon which, the bishop of Bath and Wells, seeing how invidiously he was distinguished from his brethren, in which he had not been consulted, pretended ill health; and we were at a stand, till a new licence was sent us, in which the bishops of Winchester [Trelawney,] Bristol [Robinson,] and St. Davids [Bisse,] were added to be of the Quorum. The two last were newly consecrated, and had been in no functions in the Church before: So the queen not only passed over all the bishops, made in king William's reign, but a great many of those named by herself, and set the two last in a distinction above all their brethren. All this was directed by Atterbury, who had the confidence of the chief minister; and because the other bishops had maintained a good correspondence with the former ministry, it was thought fit to put marks of the queen's distrust upon them, that it might appear, with whom her royal favour and trust was lodged.

"The convocation entered on the consideration of the matters referred to them by the queen: And a committee was appointed, to draw a representation of the present state of the Church, and of religion among us; but after some heads were agreed on, Atterbury procured, that the drawing of this might be left to him: And he drew up a most virulent declamation, defaming all the administration, from the time of the Revolution: Into this he brought many impious principles and practices, that had been little heard of or known, but were now to be published, if this should be laid before the queen. The lower House agreed to his draught; but the bishops laid it aside, and ordered another representation to be drawn, in more general and more modest terms. It was not settled, which of these draughts should be made use of, or whether any representation at all should be made to the queen: For it was

known, that the design in asking one was only to have an aspersion cast, both on the former ministry and on the former reign. Several provisions were prepared, with relation to the other particulars in the queen's letter: But none of these were agreed to by both Houses.

"An incident happened, that diverted their thoughts to another matter: Mr. Whiston, the professor of mathematics in Cambridge, a learned man, of a sober and exemplary life, but much set on hunting for paradoxes, fell on the reviving the Arian heresy, though he pretended to differ from Arius, in several particulars: Yet upon the main he was partly Apollinarist, partly Arian; for he thought the Nous or Word was all the soul that acted in our Saviour's body. He found his notions favoured by the apostolical constitutions; so he reckoned them a part, and the chief part of the canon of the Scriptures. For these tenets, he was censured at Cambridge, and expelled the university: Upon that, he wrote a vindication of himself and his doctrine, and dedicated it to the convocation, promising a larger work on these subjects. The uncontested way of proceeding in such a case was, that the bishop of the diocese, in which he lived, should cite him into his court, in order to his conviction or censure, from whose sentence an appeal lay to the archbishop, and from him to the crown: Or the archbishop might proceed in the first instance in a court of audience: But we saw no clear precedents of any proceedings in convocation, where the jurisdiction was contested; a reference made by the high commission to the convocation, where the party submitted to do penance, being the only precedent that appeared in history; and even of this we had no record: so that it not being thought a clear warrant for our proceeding, we were at a stand. The act, that settled the course of appeals in king Henry the 8th's time, made no mention of sentences in convocation; and yet, by the act in the 1st of queen Elizabeth, that defined what should be judged heresy, that judgment was declared to be in the crown: By all this (which the archbishop laid before the bishops in a letter, that he wrote to them on this occasion) it seemed doubtful, whether the convocation could, in the first instance, proceed against a man for heresy: And their proceedings, if they were not warranted by law, might involve them in a Præmunire. So the upper House, in an address, prayed the queen to ask the opinions of the judges, and such others as she thought fit, concerning these doubts, that they might know how the law stood in this matter.

"Eight of the judges, with the attorney and solicitor-general, gave their opinion, that we had a jurisdiction, and might proceed in such a case; but brought no express law nor precedent to support their opinion: They only observed, that the law-books spoke of the convocation, as having jurisdiction; and they did not see that it was ever taken from them: They were also of opinion, that an appeal lay from the sentence of convocation to the crown; but they reserved to themselves a power to change their mind, in case, upon an argument that might be made for a prohibition, they should see cause for it. Four of the judges were positively of a contrary opinion, and maintained it from the statutes made at the Reformation. The queen, having received these different opinions, sent them to the archbishop, to be laid before the two Houses of Convocation; and, without taking any notice of the diversity between them, she wrote that, these being now no doubt to be made of our jurisdiction, she did expect, that we should proceed in the matter before us. In this it was visible, that those who advised the queen to write that letter, considered more their own humours than her honour. Yet two great doubts still remained, even supposing we had a jurisdiction: The first was, of whom the court was to be composed; whether only of the bishops, or what share the lower House had in this judiciary authority: The other was, by what delegates, in case of an appeal, our sentence was to be examined: Were no bishops to be in the court of delegates? Or was the sentence of the archbishop and his twenty-one suffragan bishops, with the clergy of the province, to be judged by the archbishop of York and his three suffragan bishops? These difficulties appearing to be so great, the bishops resolved to begin with that, in which they had, by the queen's licence, an undisputable authority; which was to examine and censure the book, and to see if his doctrine was not contrary to the Scriptures, and the first four general councils, which is the measure set by law, to judge heresy. They drew out some propositions from his book, which seemed plainly to be the reviving of Arianism; and censured them as such. These they sent down to the lower House, who, though they excepted to one proposition, yet censured the rest in the same manner. This the archbishop (being then disabled by the gout) sent by one of the bishops to the queen for her assent, who promised to consider of it: But to end the matter at once, at their next meeting in winter, no answer being come from the queen, two bishops were sent to ask it; but she could not tell what was become of the paper which the archbishop had sent her; so a new extract of the censure was again sent to her: But she has not yet thought fit to send any answer to it. So Whiston's affair sleeps, though he has published a large work in four volumes in octavo, justifying his doctrine, and maintaining the canonicalness of the apostolical constitutions, preferring their authority not only to the epistles, but even to the gospels. In this last I do not find he has made any proselytes, though he has set himself much to support that paradox.

"The lower House would not enter into the consideration of the representation, sent down to them by the bishops; so none was agreed on, to be presented to the queen: but both were printed, and severe reflections were made, in several tracts, on that which was drawn by

the lower House, or rather by Atterbury.* The bishops went through all the matters, recommended to them by the queen; and drew up a scheme of regulations on them all: but neither were these agreed to, by the lower House; for their spirits were so exasperated, that nothing sent by the bishops could be agreeable to them. At last the session of parliament and convocation came to an end."

"The censure that was passed on Whiston's book, had been laid before the queen in due form for her approbation: but at the opening of the session in December 1712, the bishops finding that no return was come from the throne in that matter, sent two of their number, to receive her majesty's pleasure in it; the archbishop being so ill of the gout, that he came not among us all that winter. The queen had put the censure, that we had sent her, into the hands of some of her ministers, but could not remember to whom she gave it; so a new extract of it was sent to her; and she said, she would send her pleasure upon it very speedily: but none came during the session, so all further proceedings against him were stopped, since the queen did not confirm the step that we had made. This was not unacceptable to some of us, and, to myself in particular; I was gone into my diocese, when that censure was passed; and I have ever thought, that the true interest of the Christian religion was best consulted, when nice disputing about mysteries was laid aside and forgotten."

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* Of Tracts concerning the functions and rights of the convocation, the titles of thirty nine are enumerated in the Biographia, article Atterbury. I have seen a book containing much historical learning upon those subjects, which was published in the year 1702, under the title of "Synodus Anglicana, or the Constitution and Proceedings of an English Convocation shown from the acts and registers thereof, to be agreeable to the principles of an Episcopal Church."

Somerville, in his History of queen Anne, refers to a 'Complete History of the Convocation,' 'Godolphin's History of Ecclesiastical Synods,' and 'King William's Affection to the Church of England:' and Mr. Frend in his Account of the Proceedings in the University of Cambridge against him quotes from an 'Historical Essay upon the government of the Church of England by George Reynolds, archdeacon of Lincoln.'

In the year 1707, the House of Commons had ordered to be burned by the hangman, 'An Argument proving that according to the covenant of eternal life revealed in the Scriptures, man may be translated from hence into that eternal life, without passing through death, although the human nature of Christ himself could not be thus translated, till he had passed through death.' Dr. Somerville says, "As this proposition could not be productive of bad influence upon practice, so it was defended with great ingenuity, and every mark of sincerity by the author:" and he observes, that by the expulsion, "the Commons seem rather to have displayed an officious zeal for orthodoxy."

Mr. Asgill had on the 10th of November by letter represented to the Speaker, that he was detained a prisoner in the Fleet upon two executions, and Dr. Somerville adopts the supposition that, "It was probably with the view of getting rid of this petition, and the disclaiming connexion with a person, whose embarrassments had brought him under reproach, more than from any motive of religious zeal; that the House inflicted such a severe sentence." It may however be observed, that the Commons had, by delivering Mr. Asgill out of custody, formally recognised his connexion with them, and given him the full benefit of it before they questioned him concerning the publication.

Mr. Barrington (Observations on 2 Hen. 5,) after noticing the persecution of the poor harmless Lollards in that king's reign, says, "Titus thought very differently, with regard to these kinds of prosecutions; *τους τε λεων και αντους αν αυτων ουκετι ειδεναι, αν' αλλους σωζεσθαι.* Dio Cassius, l. lxvi."

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447. Proceedings against Mr. JAMES DUNDAS, for Leasing-making and Sedition: March 3rd, 10 ANNE, A. D. 1712*. [Maclaurin's Arguments and Decisions in Remarkable Cases before the High Court of Justiciary and other Supreme Courts in Scotland.]

HER MAJESTY'S ADVOCATE against Mr. JAMES DUNDAS, Advocate.—Leasing-making.—Sedition.—Asserting the Pretender's right, &c.

THREE Libels were executed successively against the pannel, all of them of the following tenor:

"That where, by the law of God, and the laws of this and all other well-governed realms, every soul ought to be subject unto the higher

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* Boyer, who had before mentioned (p. 456) that in 1710 the friends of the Pretender had distributed in the Netherlands such a medal as that which gave rise to this prosecution, thus

powers, as ordained of God, and none ought to revile or curse the ruler of the people, but all ought to submit themselves dutifully to the ordinances of man, for the Lord's sake, whether it be to the king, as supreme, or to governors, as unto them that are sent by him; and all ought to honour the king: likeas by the laws and acts of parliament it is statute; and first by the act of parliament king James 1, parl. 2, cap. 43, That leasing-makers, and tellers of them, to the engendering of discord between the king and his people, tyne [forfeit] life and

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relates (pp. 511, *et seq*:) the circumstances more immediately connected with the case.

"A spirit of Jacobitism discovered itself in Scotland; which was owing to several concurring causes. It was a general observation, that the Union of the two kingdoms having been mainly obtained by bribery and corruption within doors, by force and violence without; and, on the other hand, the desirable end of it, an union of affections and advantages, not being cordially prosecuted, the ill humours and discontents, that occasioned a strong opposition to that transaction in 1706, were rather increased than abated, when the queen thought fit to change her ministry; which was necessarily attended with alterations in Scotland. Moreover, some of the nobility there, who had formerly most warmly opposed, both the settling of the succession in the Protestant line, and the Union; but who had private piques against the late English ministers, being now chosen into the British parliament, it is not improbable, that the discontented Scots, particularly the friends of the Pretender, might fondly believe this to be a proper opportunity, both to shew their own inclinations, and to try how far they might expect to be countenanced: to which they might be further encouraged by the late numerous English addresses, asserting and maintaining the sole hereditary right. Upon this presumption, the duchess of Gordon, a Roman Catholic, having, about the latter end of June, sent to Mr. Robert Bennet, dean of the Faculty of Advocates of Edinburgh, a silver medal, with a head on the right side, and this legend, 'Cujus est?' And on the reverse, the British islands, with this motto, 'Reddite,' as a present to the faculty, the said medal was first left in the hands of one of their servants; the dean being shy either to accept it, or place it in the repository of rarities, before he had consulted some of the members of the faculty. In order to that, there being either an occasional, or set meeting, on the 30th of June, Mr. Bennet presented to them the medal before-mentioned, telling the faculty, "Her grace the duchess of Gordon sent, as a present to them, the medal of king James the eighth, whom they, and the English, called the Pretender: and he hoped thanks were to be returned to her grace." Mr. Alexander Stevenson answered, that the medal should be returned to her grace, for the receiving it was throwing dirt on the face of the government. He was seconded by Mr. Robert Alexander, of Black-house, who said, that the receiving of such a medal, was owning a right contrary to her majesty's. Mr. Robert Frazer answered, "That Oliver Cromwell's medal, who deserved to be hanged, and the arms of the commonwealth of England, had been received, and why not this?" Upon this Mr. Duncan Forbes, brother to Colloden, and Mr. Joseph Hume of Nineboles, said, it was time enough then to receive the medal, when the Pretender was hanged; to whom adhered Mr. Hugh Dalrymple, son to the president; Mr. James Ferguson, son to sir John Ferguson of Kirkennel, and sir James Stuart of Goodtrees, her majesty's solicitor. After that, Mr. Dundass, of Armiston, rose up, and made the following speech:

"Dean of Faculty, whatever these gentlemen may say of their loyalty, I think they affront the queen, whom they pretend to honour, in disgracing her brother, who is not only a prince of the blood, but the first thereof; and if blood can give any right, he is our undoubted sovereign. I think, too, they call her majesty's title in question, which is not our business to determine. Medals are the documents of history, to which all historians refer; and therefore, though I should give king William's stamp, with the devil at his right ear, I see not how it could be refused, seeing an hundred years hence, it would prove, that such a coin had been in England. But, dean of faculty, what needs further speeches? None oppose the receiving the medal, and returning thanks to her grace, but a few pitiful scoundrel vermin and mushrooms, not worthy our notice. Let us therefore proceed to name some of our number, to return our hearty thanks to the duchess of Gordon." Hereupon the dean of the faculty put it to the vote, and it was carried by a majority of 63 voices against 12, (there being 75 members present) that thanks should be returned to her grace, by Mr. Dundass, and Mr. Horn of Westhall. Three days after, these two waited on the duchess, and Mr. Dundass returned her the most hearty thanks of the faculty for all her favours, particularly in presenting them with a medal of their sovereign lord the king; hoping, and being confident, that her grace should, very soon, have an opportunity to compliment the faculty with a second medal, struck upon the restoration of the king and royal family, and the finishing rebellion, usurping tyranny and whiggery. It was, on this occasion, justly observed, that this medal was not new; for the public had an account of its being dispersed in the Netherlands about a year before: and it was then the general opinion, that it was struck upon the fond hopes given by the Jacobites in England, to their correspondents in France, that the British nation was ready to declare for the Pretender: to which the distractions occasioned by Dr. Sacheverell's Sermon and Trial, and the asserting the doctrines of divine

goods to the king; which, by the act of parliament, Ja. 5, parl. 6, cap. 83, is extended to such as make evil information of the king to his lieges, as well as to those that make leasings to the king of his lieges: likeas by the act of parliament, queen Mary, parl. 6, cap. 60, speaks of unreasonable communing, to the occasioning of conspiracy against the prince, or of sedition, are to be punished at the queen's pleasure: and by the act of parliament, Ja. 6, parl. 8, cap. 134, all such as privately or publicly, in sermons, declarations, or otherwise, utter slander-

hereditary right, and of absolute passive obedience, diametrically opposite both to the late Revolution, and the Protestant Succession, gave some air of probability. Nor was this medal scarce, but rather common; and as for its intrinsic value, it did not exceed half a crown: so that it could not be worth either the duchess's while to present it, or the faculty's to receive it, on the account of its being new, scarce, or valuable in itself. And if the advocates designed it only as a curiosity, they might have easily procured it, and placed it among their collection, without formality and noise. But the duchess's presenting it, and some of the advocates receiving it with solemnity, and endeavouring to make it the act of the faculty, by returning thanks to her grace in the name of the whole society, with so much ostentation, was certainly a public and treasonable affront to her majesty, a tacit arraignment of her title, and a striking at the settlement in the House of Hanover. Nor is it to be doubted, that the design of the Jacobites was to give reputation to their cause, by engaging so many gentlemen of the long robe to espouse it; as the readiest way to bring the common people into their measures: for as these are generally led by example, they would be apt to conclude, that there could be no danger in following the pattern set them by those, who, of all men, ought best to understand the laws and constitution of their country. The timing of this transaction was likewise judged very remarkable: for, it was soon after the assembly of the kirk of Scotland had publicly declared themselves for the Protestant Succession in the most illustrious House of Hanover; and their sense being justly taken for that of the bulk of the Protestants in Scotland, whom they represent in an ecclesiastical capacity, it seemed, the Jacobite party there thought it necessary to balance them, by the sense of the ministers of law and justice in that country. This happened also immediately after her majesty had declared, in her speech at the close of the last session of parliament, that it was needless for her to repeat the assurances of her earnest concern for the Succession of the House of Hanover: from whence it may be concluded, that the Jacobites, being sensible of the hurt this declaration had done their cause, they might think, the only way to retrieve it, was, by getting so many lawyers to declare for them. And, in the last place, this was done at a time when the armies were in the field, and the Pretender reported to be gone from St. Germains, in order to embark in some port of France on the ocean; which might raise a well-grounded suspicion, that this was designed to favour a second invasion: the rather, because Mr. Dundass, in his compliment to the duchess of Gordon, did not scruple to insinuate a speedy restoration of the king and the royal family.

"The report of this medal's being presented, and received with the circumstances abovementioned, having made great noise in Edinburgh; sir David Dalrymple, the queen's lord advocate, thought it his duty to give an account of it to the duke of Queensberry, one of the principal secretaries of state, who happening to die at this very juncture, that information was laid before the queen, by one of the other secretaries: whereupon, orders were sent to the lord advocate, to enquire into that matter. The faculty of advocates being sensible of the error committed by some of their members, endeavoured to palliate it by a declaration, importing, "That being met extraordinarily, it appeared to them, that a medal was sent to one of their servants; who being called, acknowledged his having the same, and justified that it never was put into the faculty's collection of medals, nor had ever been out of his custody. That the said dean and faculty did, at the same time, unanimously declare, that they rejected the offer of the said medal, and ordered the said servant to deliver up the same into the hands of the lord advocate, which was done in their presence: and did unanimously appoint a committee, to bring in an act of faculty; containing a narration of the fact as above, and a declaration of their duty and loyal affection to her majesty's person and government, and the Protestant Succession as by law established; and their detestation of all practices, that, directly or indirectly, might contain the least insinuation to the contrary, or any encouragement to the Pretender." It was for some time matter of doubt, whether the government would be satisfied with this act of the faculty; for it was well known, that, notwithstanding their public recantation, or denial, yet the fact had happened as was above related; and was, in private, justified by some of the members that had been most active in it: but as it is prudence, in many cases, for princes rather to overlook, than punish injuries; so the court thought fit to make no further inquiry into that business: wisely considering, that the advocates could not be so extravagant, as to venture upon a piece of temerity so nearly bordering upon treason, had they not been sure of being supported by a strong party of Jacobites, and other discontented persons, who wanted but an opportunity to rise. However, this lenity of the government emboldened Mr. Dundass to write, and send to the press, a vindication more traitorous, if possible, than

ous or untrue speeches, to the reproach of his majesty, his council and proceedings, or to the dishonour and hurt of his highness, or who meddle in the affairs of his highness, and his estate, present, by-gone, and in time coming, are to be punished as leasing-makers: and by the act of parliament, Ja. 6, parl. 10, cap. 10, it is statute, That none depreciate his majesty's laws and acts of parliament, nor misconstrue his proceedings, to the moving of any strife betwixt his highness and his subjects, under the pain of death: and all these acts ratified Ja. 6, parl. 14, cap. 205: and these acts also extended against the authors and publishers of slanderous speeches or writs of the estate, people, or country of England, or any counsellor thereof, to the hindering the then intended union, or whereby hatred may be fostered, or misliking raised, between his majesty's subjects of this island; and all such are ordered and ordained to be severely punished in their persons and goods at his majesty's pleasure, Ja. 6, parl. 22, cap. 9: likeas by our act of parliament 1703, cap. 4, it is ordained, That for hereafter the crimes above mentioned shall be punished by fining, imprisonment, or banishment; or if the transgressors be poor, corporally: likeas by the first acts of the parliament, 1702 and 1703, our royal power and authority, and our undoubted right and title, are fully asserted and recognised. And further, by the common law, as well as by the foresaid laws and acts of parliament, injuries, slanders, reproaches and defamations, to the engendering of discords between the king and his people, or the occasioning of conspiracy against the prince, or of sedition, or to the dishonour or hurt of his highness, or to the moving dislike between his majesty and his subjects, may be done, perpetrate, and committed, not only by words and writing, and printing, but also by things themselves, as scandalous, seditious, pernicious medals, pictures, or the like, with their disloyal and wicked inscriptions; and the actors or accessories to the said crimes, so committed, ought to be severely punished by the pains of law. Nevertheless, it is of verity, that you the said Mr. James Dundas, advocate, is guilty, art and part, of all and every, or one or other, of the foresaid crimes: in sua far as the said Mr. James Dundas, shaking off all fear of God, and regard to us and our laws, did first upon the 30th, or one or other of the days of June or July last bypast, in an extraordinary meeting of the faculty of advocates in Edinburgh, where a medal of the Pretender (the very same, or like to that which is now consigned in the clerk's hands, that Mr. Dundas may see it) was brought, and presented, and noticed in its inscriptions and mottos, which were the islands of Great Britain and Ireland, encompassed with the sea and ships, on the one side, with the motto 'Reddite,' and having on the reverse a face, said to be the Pretender's; that is, the person pretended to be the prince of Wales during the life of the late king James, and since his decease pretending to be, and taking on him, the style and title of our dominions, with the motto 'Cujus est;' and which medal was said to be presented to the faculty by the duchess of Gordon, to be put in the collection of their medals: the said Mr. James Dundas did then and there, not only contend and plead for the same, but though it was by some objected, That the medal was injurious to and reflecting upon us, and our right and government; yet he opposed and alleged, That being the medal of the Pretender, who had the right of blood, and which right he said was good, or words to this purpose, it ought to have been received, and the opposition made to it by mushrooms or scoundrels, or words to this purpose, ought not to be regarded; and so it was in a manner acquiesced to by the meeting, that the medal should be received, and thanks returned for it, which practice of Mr. Dundas upon the matter,

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their proceedings about the medal; but, before its publication, the printer carried the copy of it to the lord provost of Edinburgh, who communicated it to sir James Stuart; and he took care that the queen and council should be informed of it; upon which, that paper was entirely suppressed. Moreover, Monsieur de Kreyenberg, resident from the elector of Hanover, having, by his electoral highness's express orders, presented a memorial, and made pressing instances for the prosecution of Mr. Dundass and his associates; the government not only granted his request, but even removed sir David Dalrymple from his office of lord advocate, on pretence that he had been somewhat remiss, in prosecuting the Scotch Medalists; and reinstated sir James Stuart in that post, on account of the zeal he had lately shewed, in advising the suppressing of Mr. Dundass's vindication. Though this gave some satisfaction to the friends of the Protestant Succession, yet, it is observable, that sir David Dalrymple was so far from being an enemy to it, that his particular acquaintance did not stick to affirm, that he would have prosecuted the medalists with greater severity than any whatever, had he not had secret instructions from a great man at court, not to stir in that affair." It appears by the text that this prosecution was conducted by sir James Stewart.

Dr. Somerville very briefly speaks of this matter in a note, in which he mentions, that the omission of the ministry to enquire into the truth of the contradictory assertions, as to the conduct of the advocates, which were made by themselves and their accusers; or to take notice of several Jacobite publications in circulation, while they prosecuted with the utmost severity, the authors who wrote in defence of the late ministry, under a professed zeal for Whig principles, strengthened the suspicion propagated against the ministers by their enemies, that they were cherishing designs friendly to the Pretender.

and according to the nature of the thing, was a most scandalous, seditious and pernicious reproach upon us, our government, and right thereto, tending to the engendering discord between us and our people, and to occasion conspiracy or sedition against us. Likeas it also was a most criminal reflection upon, and misconstructing of, the proceeding of us and our parliaments for settling the succession, contrary to the very Oath of Abjuration that he the said Mr. Dundas had taken, and clearly tending to move dislike between us and our subjects. But the said Mr. Dundas, not resting in this his wicked practice, hath, upon one or other of the days of August last, further proceeded to the making or publishing of a most scandalous, pernicious and seditious pamphlet, under the title of 'The Faculty of Advocates Loyalty, in 'a Letter to us by one of the Dean of Faculty's Council.' Which pamphlet, and most infamous libel, is a heap of lies, villanies and mischief; whereof his written copy, with the printed copy printed by his order, and so published, is put in the clerk of court his hands, that he may see it; and a double also of the same, held as here repeated, and given out to him to answer: as, first, and in the first paragraph thereof, where, abusing a very tender and sacred principle and position of government, as to Non-Resistance, he stretches the same most wickedly and maliciously to the condemning of the late happy Revolution; and then proceeding, he villanously reflects upon the very first happy times of our reformation from Popery, directly accusing both our noble regents and worthy reformers, and also the English, then our friendly assistants, of rebellion and tyranny against the then queen Mary; adding, that after her decease we submitted to the next in blood; but then he plainly asserts, against our right and title, and the succession to the crown, as now settled by act of parliament, that relation, kindred, and the rights of blood, are so sacred, that no crime, nor no power on earth, could take them away: thereafter he goes on with his malicious strictures upon the times of the late king Charles 1, and upon things long since happily buried by several acts of indemnity, and that not without most rude reflections on the English as cowards: and where, in a word, he makes the whole English nation either professed Jacobites, that is, enemies to us, or such villains, as he calls them, as to profess only loyalty in shew, when they are at the bottom abominable hypocrites, false friends, and traitors. Then he goes on to reflect again upon the late happy Revolution, which he reckons no better than a curse, and the late king William, of ever-glorious memory, no better than a Nebuchadnezzar; and that to him we were all made slaves; and thence he takes a new flight against the late king William's memory, whom he falsely accuses of alienating the bishop's rents to profane uses, of giving us ignorant and villainous judges, (though Mr. Dundas his own father, a person of probity and merit beyond exception, was one of them,) exhausting Britain of money, carrying our countrymen abroad to be killed in time of war, and ordering them to be starved in time of peace; and after the example, as he says, of that abominable monster Nero, who, beside his inhumanity to his parents, burnt with joy the city of Rome. And he further accuses the said king William of prostituting the honour of the nation; and all along he treats his government as a foreign yoke. But then he goes on to accuse and slander us who now reigns, for continuing, contrary to law, as he alleges, king William's parliament, though it was both warrantable, and approven by an express act of parliament; whence he proceeds to condemn the union of the two kingdoms as a fatal blow to our laws, and the finishing subversion of our constitution, in laying an embargo upon our trade, divesting the Peers of their hereditary right, diminishing the parliamentary representation of the Commons, and surrendering the whole power and sovereignty of Scotland into the hands of a more powerful people, our old enemies of England; and not stopping in his reflecting upon and reproaching the Union, he goes on to reflect upon the proceedings of us and the British parliament, by abrogating part of our laws, though infinitely better, as he says, than those of the English, and introducing the English laws about treason, in place of ours, which he also falsely makes a breach of an article in the treaty. And then, taking notice of the appeals that lie from the lords of council and session to the British parliament, he roundly reproaches the whole House of Peers, as men who can scarce be presumed to know either law or equity; adding further another false insinuation, as if our representatives were, contrary to the treaty of Union, ranked after all the counties and boroughs of England. Nor doth the kingdom of Ireland escape his unaccountable malice and reproach, when he calls it a receptacle of English slaves, and a conquered province, unjustly preferred to Scotland. And further wickedly adds, to the manifest engendering of discord, and moving of dislike, that all overtures for the good of Scotland were refused. After all which he most absurdly concludes for the loyalty of the advocates, though they had received a medal of the Pretender, from no better arguments than his own pernicious and wicked reflections above remarked. By all which it is manifest, that the said Mr. James Dundas is guilty, art and part, of most seditious and pernicious practices; as also of a most wicked, villanous, seditious and pernicious pamphlet, and defamatory libel, contrary to the foresaid laws and acts of parliament. Which being found by a verdict of an assize, before our lords justice general, justice clerk, and commissioners of justiciary, he ought to be, by their sentence, severely punished with the pains of law, to the example and terror of others to do the like in time coming."

Sir *James Stewart*, her majesty's *Advocate*,

produced an order, signed by lord Dartmouth, one of the secretaries of state, to prosecute.

Pleaded for the pannel, The prosecutor can only insist upon one of the libels, and the other two must be dropped; for the pannel cannot be obliged to answer to three libels upon the same fact at once, as that might produce three sentences against him, l. 1, s. 3, ff. De Accusat.; l. 11, s. 2, eodem. The list of the assize is only given out with the first libel; and therefore if it be passed from, there can be no trial. If the other two are passed from, the additional list of witnesses given out with them must go for nothing. 2ndly, The libel holds the pamphlet as repeated, or a part of the libel; it ought therefore to have been given out with the summons and citation; for no part of a criminal libel can be left in the clerk's hands more than another.

As to the first branch of the libel, which charges seditious practices, the facts charged are not relevant; because, first, by no law is the receiving such a medal forbidden; consequently the argument for receiving it could not be a crime. As to the pretence, that the medal asserts the prince of Wales's right to the crown, there is nothing on the medal which directly asserts that right; so that even the corner of the medal could not be the ground of action: and it is without precedent to punish for a pretended meaning when nothing is expressed. 2ndly, Supposing the medal asserted the Pretender's right, no law prohibits the keeping such medal, any more than the keeping or using a book that maintained that or any other bad principle. The 134th act, Ja. 6, condemns Buchanan's Chronicle; yet those people who kept it in their possession never were punished. In France, the having British coin, which asserts our sovereign's having right to that kingdom, was never reckoned punishable. 3dly, As to the assertion, That the Pretender had the right of blood, or words to that purpose, in the first place, this is too general, and 'in criminalibus non licet vagari.' 2ndly, The using such expression is not pleading against her majesty's right to the crown; for her majesty's right is not incompatible with another's having what may be called the right of blood; for blood alone gives no right to the crown; it gives a title, if the person that has it be not debarred by the want of other qualities, which our laws require. Thus many are nearer by blood to the succession than the House of Hanover; yet it is called before them, and they are excluded, because of their want of other qualities.* Hence the saying, that the Pretender had the right of blood, was only saying, he was a near relation to the queen: but it did not import a denial of her majesty's just right to the crown; and therefore the argument for receiving the medal upon that ground, cannot be criminal, though the argument might be inconclusive.

As to the second branch of the libel, founded on the pamphlet: in the first place, the mere composing a pamphlet, without publication, is no crime, more than the speaking in private where nobody hears. Writing, without publishing, can never occasion sedition. The act 131, parl. 8, Ja. 6, relates to open public speaking; the act 10, parl. 10, Ja. 6, to slanderous writings; by which such must be understood as occasion a misunderstanding between the king and his subjects. The act 1662 means the same, and has been only so understood. 2dly, Publication is not charged in the libel; all that it alleges is, that one copy was printed by the pannel's order: but printing one copy could never, in the eye of law, be publication; for the printing a single copy could never occasion disgust or discord between prince and people. The act 21 Rob. 1, and the act 1662, distinguish between printing and publishing. What is printed must therefore be dispersed, in order to constitute publication; but that is not alleged in the libel; l. 1, ff. De edendo; l. un. C. de famosis libellis; l. 5, s. 11, ff. ibid. All that is libelled is the giving orders to print; but that is not publishing: and as what was printed never was *de facto* published, there was at most no more than a *conatus*, which is not punishable; l. 1, ff. Quod quisque juris; l. 10, par. 5; l. 5, par. 10, De famosis libellis; l. 38, s. 2, De pœnis. So that the libel is not only founded upon old obsolete laws, but they are stretched beyond measure. 3dly, The pannel offers to prove, in exculpation, that his orders were limited not to print, without a licence from the provost of Edinburgh; which shows he had no design to raise sedition. 4thly, The pamphlet may be understood in a good sense, as containing a view of the tenets of those who without any just reason carp at the present administration, and a ridicule of such people. It is very common, in an ironical manner, to commend certain articles and principles which are meant to be exposed; and we have satires written against marriage, which were designed to recommend it. The proposition laid down in this pamphlet, That our prince is absolute, must be ironical; as it is plain from our history and acts of parliament, that he is not; and that the supreme legislative power is lodged in the king and parliament.

Answered. To the first, The three libels are all precisely in the same words, and are used for the purpose of giving citations on the discovery of more witnesses or new documents: but the conclusion is one. To the second, The pamphlet is referred to as a proof of the crime charged. To the third, The mere receiving a medal may not be criminal; but the pleading for receiving it in the manner libelled, shows a design to reflect on her majesty's right, especially as it was objected to on account of its being a medal of the Pretender. The argument for receiving it on that account, and because he had the right of blood, which was good, was plainly to impugn her majesty's right, as two rights to one crown are incompatible: and this was more than barely asserting the Pretender's

* As to this, see vol. 12, p. 164.

relation to the queen; for the pleading his right of blood, to reinforce the motto of the medal 'Reddite,' was equal to pleading for the restoration of the Pretender. And as this was done publicly, it differs much from the keeping or using bad books, which may be connived at. And as to the keeping our money in France, it passes there as a coin in commerce.

As to the defences respecting the pamphlet, in the first place, writing is more than thinking. It is an ouvert act, and criminal of itself, by act 2, parl. 1662, and by act 10, parl. 10, James 6. 2ndly, The printing the pamphlet was the most direct method of publication that could be used. And as to the pretended caution, it might be affected; for if the pamphlet was in fact published, the author must answer for the consequences, especially as copies went abroad; which are presumed to have come, and must have come, from him or his associates. As to the meaning of the pamphlet, that is submitted: the perusal of it must satisfy every person, that it cannot bear the sham commentary now put upon it by the pannel's counsel. The laws libelled on are not obsolete, when a capital punishment is not insisted for; and they were mitigated by the act 1703.

The Court found, "The pannel's pleading, at a meeting of the faculty of advocates, to receive into the collection of medals in the said faculty's library, the medal libelled upon, for this reason, that the Pretender had the right of blood, and that the said right was good, or words directly importing the same, and not by inference, and that though the receiving of the said medal had been objected against as injurious to the queen her right to the government, relevant to infer an arbitrary punishment. And, *separatim*, found, his giving in to the printer, and ordering him to print the paper, entitled, 'The Faculty of Advocates' Loyalty, in a Letter to the Queen's most Excellent Majesty, by one of the Dean of Faculty's Council,' libelled upon and read in court, a sufficient publication thereof, and relevant to infer an arbitrary punishment: and repelled the haill defences proponed for the pannel."

The Diet was afterwards deserted.

Act. Sir James Stewart, T. Kennedy.
Alt. Sir W. Pringle, sir J. Nasmyth.

Arnot, in his Abridgement of Scots Criminal Trials, has inserted the following, which may serve to illustrate the strange extravagance of the Jacobites, and the mildness with which it was punished.

Charles Lord Fraser* for High Treason, in proclaiming the late King James to be Righteous and Lawful Sovereign of this Realm, &c. [1693.]

It was charged against the prisoner, that, contrary to his allegiance, he, in the month of June or July 1692, went with his accomplices to the market-cross of Fraserburgh, stepped upon the cross, and, after three † several O Yes's, did three several times proclaim the late king James, and the pretended prince of Wales, to be righteous and lawful king of this kingdom, and successor to the same, and that they cursed all who would say the contrary: then they drank, and caused to be drank, king James's good health, and that of the prince of Wales, and cursed king William and all his adherents; drank to his confusion; uttered reproachful speeches of him, calling him Burgar, and Burgar-master of the Hague, and saying that he was only prince of Orange: that, for the greater solemnity, they fired guns and pistols from the cross on the occasion, and forced some of his majesty's subjects to drink treasonable healths: by all which the prisoner testified his rebellion against his majesty's person and authority, and his treasonable intentions to depose the king, and did disown the king's title to the crown, and did all that in him lay to incite the people to take arms: for which contempts and treasons he ought to be punished with death, and the forfeiture of his estate.

After a prolix argument, the court found the indictment relevant to infer the pains libelled.

The following persons composed the Assize: lord Forrester, lord Bargeny, the master of Forbess, James Oswald of Singletoun, James Baird of Saughtonhall, Patrick Murray of Livingstone, Mr. George Scot of Giblestone, William Dick of Grange, sir Alexander Gilmour of Craigmillar, James Eleis of Southsyde, sir Robert Milne of Binnie, Hugh Wallace of Inglistoun, Alexander Nisbet of Craigintinnie, William Biggar of Woolmet, and sir William Binning of Wallyfoord.

The Proof.

Thomas Pyper, weaver, saw lord Fraser come from the house of John Hay vintner, and go to the cross, and step upon it: he heard one in the company cry three O Yes's, and proclaim the late king James and the prince of Wales, and this was after some person had bid him proclaim, to whom he answered, 'what shall I proclaim, my lord?' After these proclamations, the witness heard king James's name mentioned, saw the people on the cross have drink with them, and heard the shooting of pistols. Adds, that lord Fraser was on the cross at the same time with the man who proclaimed king James.

John Wood saw lord Fraser and others go to the cross, saw his lordship on the cross, heard a servant belonging to the company cry three several O Yes's, and then proclaim the late king

* This family was raised to the peerage by Charles 1, A. D. 1633. The title became extinct by the prisoner's dying without issue; Douglass's Peerage, page 273.

† Records of Justiciary, March 29, 1693.

James and the prince of Wales; and after the proclamation he heard two shots of a pistol. The witness carried wine to the company at the cross.

Henry Finlayson saw lord Fraser and others on the cross drinking healths; their servants told him it was the late king James, and prince of Wales's health: lord Fraser and another gentleman held drawn swords to the deponent's breast, and forced him to drink some healths.

John Hay, vintner, deposed, that lord Fraser went out of his house to the cross, and the deponent went there also, and heard his lordship drink king James's and the prince of Wales's health. He heard also the firing of pistols.

Alexander Robertson heard a noise at the cross, opened his window, and saw and heard a person cloathed in red cry three O Yes's, and proclaim king James as our righteous king. The deponent, at the same time, saw the prisoner on the cross, and heard the company drinking healths. He did not distinctly hear whose health, but heard the words, 'Burgar, 'the Hague, and Orange,' come from the company.

James Hardie, servant to John Hay vintner, saw lord Fraser, and several others, go to the cross, and the witness was employed to hold some of their horses. He heard and saw a footman make three O Yes's, off the cross, and begin a health to king James and the prince of Wales, 'and bid the ill man * take all that re-'fused to pledge it.' He saw the prisoner, and others, drink the health, and heard some shots of a pistol.

James Scot saw lord Fraser, and others, at the cross; he saw and heard them drink king James's, and the prince of Wales's healths, and heard lord Fraser curse those present who refused the toast. He heard four shots.

The Lord Advocate protested for an assize of wilful error, if the jury should acquit the prisoner. The prisoner protested in the contrary; because the committee of estates which declared king James to have forfaulted the crown, and bestowed the same on William and Mary, solemnly enacted and declared, 'That assizes of 'error * are a grievance.'

Seven peers and eight gentlemen of distinction who were summoned to be upon the jury, were fined † a hundred merks each, for not obeying the citation. The jury, of which lord Bargeny was chancellor, all in one voice found it not proved that the prisoner either actually proclaimed, or caused proclaim, the late king James, and the pretended prince of Wales; but found it proved that he was present at the proclamation. Found, by a plurality of voices, that a proclamation was made at the cross of Fraserburgh, of the late king James and the prince of Wales; 'but not in terms of 'the indictment, viz. as being righteous and 'lawful king of this kingdom, and lawful suc-'cessor therein.' The assize, all in one voice, found it not proved, that the prisoner and his accomplices cursed all those who would say to the contrary. They found it proved, that the prisoner drank king James's health, and that of the prince of Wales: but found his cursing king William, and drinking to his confusion, and uttering reproachful speeches of him and forcing people to drink treasonable healths, not proved. They found that pistols were fired, but did not find that it was by the prisoner's order. The Master of Forbess, the lairds of Craigmillar, Livingstone and Southsyde, desired it to be marked in the record, that they found the proclamation proved in terms of the libel. On the 16th of May the court pronounced sentence on lord Fraser, fining him in 200*l.* sterling.

Arnot says, in a Note, "In the reign of Geo. 1, Alexander Crawfurd was fined 50*l.* sterling, for drinking the health of king James 8, and to his happy restoration. Rec. of Just. 21st Feb. 1715. And a Highland minister was turned out of his meeting-house for three years, for not praying for king George by name, but for the 'supreme in authority who sits upon the 'royal throne,' and this at a time when there was no statute for praying for the king by name, except that which ordained the clergy to pray for queen Anne, and the princess Sophia: nor any law for it, but a proclamation of the Lords of the Regency. Rec. of Just. 11th, 14th, 18th, 19th, 25th July 1715."

* A fanatical term for the devil.

* As to this, see Vol. 11, p. 75.

† As to assizers for noblemen, see Vol. 10, p. 1071.

448. The Trial of RICHARD NOBLE*, Gent. for the Murder of JOHN SAYER†, Esq. and of Mrs. MARY SAYER, for Petty Treason, and Mrs. MARY SALISBURY, for aiding and abetting the said Murder; at the Assizes held at Kingston-upon-Thames, in Surry, before the Right Hon. the Lord Chief Justice Parker: 12 ANNE, A. D. 1713.

ON Thursday evening, March 12, Richard Noble, Mary Sayer, and Mary Salisbury, were arraigned for the murder of John Sayer, esq. upon their several indictments; and pleaded Not Guilty; and were told by the Court, to prepare for their trials next morning at six o'clock.

On Friday morning at six, the Court sat, and the prisoners were set to the bar; when Mr. Noble moved to put off their trials, for that Mr. Bull, a very material evidence for them, was not come down.

Court. That must be proved by the oath of somebody, and that he was served with a subpœna to attend here. Upon which Mr. Lindsey, one of the attornies concerned for the prisoners (for they had many) deposed, that he filled up a subpœna for serving Mr. Bull, but did not serve it himself; that a messenger was sent at twelve o'clock, yesterday, to London, to serve it, but was not returned. Mr. Noble also alleged, That Mr. Page, the counsel, another material witness, was not come, and that he was served with a subpœna, and they looked for him every hour; and called Mr. Lindsey to prove this.

Mr. *Lindsey* deposed, he served Mr. Page with a subpœna last Sunday, and that he thought he would have been down at the trial.

The Court told Lindsey he should have taken care to have had his witnesses ready, and that there was no affidavit made of their being material witnesses; and reprimanded Lindsey for his neglect, and ordered the trial to go on.

The queen's counsel, Mr. Serj. Commyns, with Mr. Nott, set forth how heinous the crimes of the prisoners would appear to be, but what aggravated their crimes, was their endeavouring to procure witnesses to perjure themselves; and called

Daniel Reeves, who being sworn, proved, that one James Hannon, an Irishman, (who

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* This Mr. Noble was the son of Mr. Noble, who kept a well-frequented coffee-house at Bath, and had an estate of about 60*l.* per ann. gave his son a liberal education, and put him clerk to an attorney at the Devizes, in Wilts; when Noble was out of his clerkship, he took chambers in New-inn, London, and there practised as an attorney; he was introduced by a gentleman of honour, to transact Mr. and Mrs. Sayer's affairs, (for they had various disputes) the gentleman little thinking he would have made so ill an use of his recommendation: but Mr. Noble was a gay, amorous young fellow, about twenty-eight years of age, and what any woman would have liked, and he soon found out Mrs. Sayer's disposition, went off with her, and lived with her in various lodgings in a scandalous way. *Former Edition.*

"This evening lady Masham, Dr. Arbuthnot and I were contriving a lie for to-morrow, that Mr. Noble, who was hanged last Saturday, was recovered by his friends, and then seized again by the sheriff, and is now in a messenger's hands at the Black Swan in Holborn. We are all to send to our friends to know whether they have heard any thing of it, and so we hope it will spread. However we shall do our endeavours; nothing shall be wanting on our part, and leave the rest to fortune." Swift's Journal to Stella, March 31, 1713.

"We had no success in our story, though I sent my man to several houses, to inquire among the footmen, without letting him into the secret; but I doubt my colleagues did not contribute as they ought." Swift's Journal to Stella, April 1, 1713.

† This John Sayer, esq. was lord of the manor of Biddlesden, in Bucks, a gentleman of about 1000*l.* per ann. Married in 1699 Mary, daughter and co-heir to admiral Nevil, (whose relict married col. Salisbury) and had 3000*l.* to her fortune. Mr. Sayer, on the receipt of 1000*l.* was to settle 50*l.* per ann. pin-money, and for every 1000*l.* was to settle 100*l.* per ann. in trustees. She was a very agreeable, sensible woman, had some wit, but too much spirit; they had not been married long, before she quarrelled with him, and parted beds; then by intercession of friends came together, and parted again. In short, she carried on a criminal conversation with two or three others, before she came acquainted with Mr. Noble. —Though Mrs. Sayer will appear so vicious and wicked in the ensuing trial, yet some few years after the murder of her husband, and the execution of her gallant, she married again an eminent physician in London. *Former Edition.*

* This trial is printed from what was published at that time, (1713) and though not so perfect as it would have been, if it had been taken in short-hand, yet it will receive considerable additions from the Case of Mr. Noble, by a barrister at law, and Mr. Noble's speeches, printed afterwards. *Former Edition.*

stands committed for this offence) on Thursday before the trial, came to him, and shewed him, copies of the examinations taken before the coroner, of Samuel Derham, Thomas Gardner, and John Cox, three of the most material witnesses, to prove the murder. Hannon then gave him half-a-crown, and desired him to procure, or hire two other men to swear with him, against those examinations, and promised him two guineas for himself; and the other two men were to have what Reeves could agree with them for, and that Mr. Noble would give Reeves a larger satisfaction than what he thought he would, or could expect.

Friday evening following, Hannon came to him again, and gave him another half crown, to spend upon Derham, Gardner, and Cox, and ordered him to make what agreement he could with them, to stifle and buy off their evidence; and the next day, Saturday, Hannon came to Reeves again to know what progress he had made, and invited him to dinner on Monday, and to bring the other two men he was to hire with him; Hannon gave him a note, of his own hand-writing, where he lived, which was at number 10, in College-street, Westminster. On Monday morning Hannon came to Reeves again, and gave him a writing in the nature of an affidavit, drawn up on stamp paper (by the prisoners he said), which he, and the two men he pretended he had hired, were to swear before a judge, and gave him nine shillings more in money; whilst Hannon was thus tampering with this witness (Reeves), he intimates it to the prosecutor's attorney, and after having got this affidavit from Hannon, he shuffles off from dining with him, but promises to meet him in the afternoon; and carries the affidavit to the prosecutor's attorney; when it was settled between them, that when Hannon came again, Reeves should appear steady and zealous in the affair, and a warrant should be procured to apprehend him. Accordingly Hannon came, and a warrant having been procured from justice Hartley, instead of the two persons Reeves was to procure to forswear themselves, two constables appeared; and Reeves said to Hannon, these are my two friends. Hannon embraced them very civilly. When a third constable entered, Reeves seized Hannon's sword, and asked the other constables, if they charged him with Hannon? they replying, Yes, he was seized, and carried directly before justice Lade in Southwark; where, upon his examination, he denied the fact, and prevaricated greatly; was kept in custody that night, and next morning committed to the Marshalsea for want of bail.

The words of the pretended affidavit were as followeth:

"George Smith and Samuel Shipman, both of the parish of St. Buttolphs, housekeepers, and Daniel Reeves, of the parish of St. George's, Southwark, maketh oath, that on or about the 29th day of January last, these deponents saw Mr. Cox, and Mr. Hill, the constables, with several other persons in company with Mr. Sayer, the deceased, to go from Mr. Sherlock's house in the Mint, a brandy-shop, to one Mr. Twyford's house, wherein they entered; and on their being asked, what their business was? refused to tell; and these deponents heard the deceased Mr. Sayer, as he went into the said Twyford's house, threaten, or say, that he would be revenged on that villain Noble, and on his wife, and that he would kill them, or be killed; and these deponents saw the deceased go up stairs, and come down again, leaving both the constables above stairs; and on his coming to the parlour-door, where Mr. Noble was, drew his sword partly out, and said, Damn you, you villain, now I have found you out, and instantly pulled at the door, and broke off the bolt that was withinside the door, and thereupon the deceased after his sword was almost wholly drawn out, stept backwards, and, in about a minute, went to go down the two steps into the parlour, and seemed to be pushed down: and then some said he was in a fit, fetch him some water; but these deponents say, that they stood very near the deceased, yet could not see, nor could they believe, that any other person, considering the situation of the place, and the little door being but part open, could see who gave the said wound: And these deponents further say, they know Mr. Derham to be a poor, necessitous taylor in the Mint, of a most infamous character, and are certain he was not in the house till after the deceased was wounded; and the sword which James Terry, the deceased's footman, and others there, said gave the said wound, was taken up in the kitchen; and further say, that before the deceased broke open the said door, they saw the said Terry, with a cane in one hand, and a brass hilted sword, undrawn, in the other hand.

"And lastly, these deponents heard the said James Terry abuse the said Mrs. Sayer, giving her very bad words; he also told her, that rather than fail, he would offer his service to the sheriff to hang her, and that he would soon see the end of her; and she answered, Sirrah! It is hard to be abused by the master and the man too; and these deponents being in the room when the deceased fell down, heard Mrs. Sayer say no other words; but believe they should, if she had said any."

Jeremiah Barnard deposed, that he was summoned to Kingston assizes, on the jury on life and death; and that one Luke Jones, a waterman, carrying Mr. Stagg, an attorney, by water, on Friday the 6th of March, and telling him, Jerry Barnard was summoned on the jury; Mr. Stagg ordered him to tell Barnard, if he was not got off the jury, Stagg could help him to 20*l.* Jones asked Stagg on what account? Stagg answered, if he would bring in the gentleman who killed the man in the Mint, Not Guilty; all which Jones told this witness by Stagg's order; Stagg farther said, they having 1000*l.* and upwards, and would spend it all on the jury to save his life; for it lay in the breast of the jury only; because they had

been with the queen to get a pardon, and they could not get one. This evidence was objected to by Noble, as being only hear-say evidence.

Luke Jones being sworn, proved Mr. Stagg's talking to him, as above, and his telling Barnard what Stagg offered him, &c. Upon this the tipstaff was sent for Mr. Stagg, but he was not to be found, so a summons was ordered to be taken out against him, to attend the Lord Chief-Justice, at his chambers in London.

These bad practices being discovered, the Court ordered the Jury, summoned on this trial, to be all set aside; and a jury sent for from the Nisi Prius bar; when each person called over was sworn, and asked, whether they had been wrote to, or in any manner applied to, on behalf of the prisoners at the bar, or either of them? When they all declared in the negative; and on calling over the jury, the prisoners challenged peremptorily to the number of seventy-five, viz. Mr. Noble, 20; Mrs. Salisbury, 20; and Mrs. Sayer, 35. Mr. Noble, and the other prisoners, declared they knew nothing of Hannon, and that he was not employed by them; and that they detested such vile practices, and hoped it would make no impression on the Court to their prejudice.

JURY.

James Comber, esq.	Thomas Fox,
Edward Chalkhill,	John Bandford,
Henry Wakeford,	Philip Becham,
Edward Parkhurst,	John Hind,
Jonathan Wiltshire,	Robert Wood,
Edward Exall,	John Potterton.

Mr. *Noble* moved the Court, that he might be tried separately and apart from the ladies, for that his crime, and theirs, were distinct things; but the same was over-ruled. Then their indictments were read. Richard Noble, gent. Mary Salisbury, and Mary Sayer, widow, were indicted; He, for the murder of John Sayer esq. on the 29th of January, anno 12 Annæ; Mary Salisbury as present, aiding, assisting, and abetting the same; and Mary Sayer, widow of the deceased, for petty treason, as being present, aiding, assisting, and abetting the murder of her said husband; and the said Richard Noble was also indicted on the coroner's inquest for the said murder of John Sayer, esq. and also on the statute of stabbing; and being severally arraigned, pleaded Not Guilty, and the jury charged with them all jointly.—Then the witnesses were called.

John Farrington swore, that he was an officer to the Sheriff of Middlesex, and had a warrant delivered to him at the suit of the deceased, against the prisoner at the bar; that he arrested Mr. Noble, at his chambers in New-inn, and when he was arrested, Noble declared, and said, God damn him, if he had Mr. Sayer the plaintiff there, he would stick his sword through his body; and he would do so, whenever he saw him again. When he arrested the prisoner, he was ill, and the deceased (the plaintiff) ordered him not to take him out of his chambers, but to treat him civilly; that whilst he had him under arrest, Noble said, he would send Sayer out of the world the first opportunity; and the witness could not help saying, you have had much of his goods, and lain with his wife, and why would you do so? And Noble answered, Damn him, he would.

Mr. *Noble* objected to Farrington's evidence, for that he swore against him out of malice; because when he had him under arrest, he extorted ten guineas from him, under pretence of civility money, for which the next term after, he moved the court of King's-bench against him, who made him refund the money.

The Court said, it must be left to the jury, what credit they would give to his evidence.

Justice *Peters* swore, that in 1709, a duel was stirred up by the contrivance of Mrs. Salisbury and Mrs. Sayer, between their two husbands, the deceased and colonel Salisbury, and the challenge wrote by Mrs. Sayer (though sent by Mr. Sayer.) But when they met, the colonel told his son-in-law (Sayer), as they were going in a coach behind Montague house to fight, Jack Sayer, I should get no honour by killing of you; but thou shouldst know, what all the world knows; thy wife and my wife are two damned whores, and they want to get rid of us both. The colonel, being a good swordsman, might kill Sayer, and afterwards be hanged for it: This colonel Salisbury told me soon after. Mr. Noble objected to this evidence, as being only hearsay, and therefore could not affect either of them.

Joanna Manly (servant to Mr. Sayer), that in August 1709, after Mr. Noble's acquaintance with Mrs. Sayer, the deceased went to Holland, and returned about Lady-day, during which time, Mrs. Sayer was big with child, and her mother, and her sister Mrs. Nevil, were privy to it; and during Mr. Sayer's absence; that Mrs. Sayer carried off her master's effects and money, to a great value, and that this witness several times saw the two prisoners, Mr. Noble and Mrs. Sayer, in bed together; and after her master's return, her mistress, Mrs. Sayer, desired her to give her master some poison, and said, that if this witness would not get it, she would get it herself.

Penelope Howell, another servant, swore, that she was sent, by the prisoners, for two-pennyworth of laudanum, to make the deceased sleep, and bringing word, that the apothecary said, that quantity was enough to make any body sleep their last sleep, the prisoners bid her hold her tongue, a slut, and give it as directed.

Anne Scoffin, the midwife, swore, That on the 5th of March 1711-12, Mrs. Sayer was delivered of a male child by Dr. Douglass; that she passed for a widow, and that Noble and she were brother and sister: This child was nursed at Hoxton, died and was buried there. Mrs. Sayer was delivered in a court in Brooke-street, Holborn: that there was great familiarity between Mr. Noble and Mrs. Sayer, and that the child was like Mr. Noble, and she believed him to be the father of it.

Mr. *Martin* swore, that he knew the prisoners Mr. Noble and Mrs. Sayer: Mr. Noble desired him to take a convenient lodging for her to lie in at; which he did, and she was delivered of a male child, about the 5th of March 1711-12, by Dr. Douglass, in the presence of Mrs. Scoffin the midwife, at a house in a court in Brooke-street Holborn.

Francis Cox, That he is one of the constables of the parish of St. George the Martyr, in the borough of Southwark; that on the 29th of January last, the deceased, John Sayer, esq. with two other gentlemen, came to his house with a warrant from sir Charles Cox, for taking into custody the body of Mary Sayer his wife, who, Mr. Sayer said, was gone from him without his consent, and lived in a loose, scandalous manner. That as he went to execute the warrant, he called on Thomas Hill, another constable, to assist him, after which they both went into the Mint; and this witness being informed by Mr. Sayer, that he believed his wife was at Twyford's house, in George-street, in the Mint; this witness, having found out Twyford's house, he knocked at the door, and Twyford refused opening the door at first, till he said, he was a constable, and had a warrant to search for a suspected person in his house, and that he would not hurt a hair of his head; then Twyford opened the door to the constables, and they beckoned to their assistants, and all went in, Mr. Sayer running in after the two constables; when Mr. Sayer went up stairs, and there the deceased said, he saw some of his wife's cloaths, and that he believed she was in the house; and whilst this witness went into another little room, Mr. Sayer, and the other constable and assistants, went down stairs; and before this witness got down, he heard a great noise and screaming out, in a room below, whereupon he made great haste down, when the other constable and others, cried out to him, Mr. Sayer is dead, and the gentleman that killed him was breaking out backwards to make his escape; whereupon this witness went round the house into the garden to secure him, where he found a naked sword in the hand of Mr. Sayer's footman, eight or nine inches bloody, and Mr. Noble, Mrs. Sayer, and Mrs. Salisbury, being in the room together, he apprehended them all, and carried them before Ralph Hartley, esq. justice of the peace, who committed them to the Marshalsea.

Thomas Hill, the other constable, swore much to the same purpose; that he went with Cox the other constable, with a warrant to Twyford's house; that Mr. Sayer went up stairs first, and then came down, and he followed him; and at the foot of the stairs, there being a door leading into the back-room, Mr. Sayer laid hold of the door, and pulled it open, and immediately the deceased fell a little back, and laid his hand on his own sword, but did not draw it above a foot, for want of strength. This witness then pushing into the room before Mr. Sayer, Mrs. Salisbury fastened on his collar, and endeavoured with all her might, to keep him out of the room; and as soon as he got in, Mr. Sayer endeavoured to follow him immediately, but could not, fell down, and never spoke more. There was only Mr. Noble, Mrs. Sayer, and Mrs. Salisbury in the room; and Noble was breaking open the glass door to make his escape: The deceased being on the ground, this witness at first thought him in a fit only, and Mrs. Sayer said, it was only a sham, and he was not hurt; but he presently saw the wound on Mr. Sayer's left side, whereof he immediately died, and believes Noble gave the wound with his own sword, which was bloody, and no other sword drawn at that time; that Mrs. Sayer desired him to be civil to Mr. Noble whom he had then apprehended; but she took no care of her husband.

James Terry (servant to the deceased about eight years) swore, that staying below in the kitchen, he saw Mr. Sayer come down first, and laid his hands on the top of the door at the stairs-foot, going into the parlour, and endeavoured to pull it open; but as soon as it was a little way open, he saw a naked sword come through against his master's body, and he ran to his master, and his master fell back into this witnesses arms, and clapping his hand on this left side, said, I am dead, or killed, or such like words. The sword was left in his master's body, and fell out on the ground, and verily believes his master received a wound on the left side of his body from Mr. Noble, at the time his master opened the door a little way, of which he instantly died. This witness took up the sword, which had a mourning hilt; and seeing Twyford go round the house into the garden, followed him, when he heard the glass windows break, and saw the back door open, Mrs. Sayer in the garden, Mrs. Salisbury standing on the door step, and his master lying on the ground; he then said to his mistress, Lord Madam, what have you done to my master? he is dead, and you have killed him. His mistress said, O you rogue, I will be revenged on you too. Afterwards, he saw the wound on his master's left pap, which he saw probed, and was four or five inches deep. This witness farther deposed, that his master had no sword drawn, at the time he received the wound, nor afterwards: and that no words passed between him and the party who gave the wound.

Thomas Gardner, the constable's assistant, swore, that there being a door at the foot of the stairs in Twyford's house, he saw Mr. Sayer lay his hand on the door, and endeavoured to pull it open; and as the door was a little open, he saw Mr. Noble in grey cloaths within the room, and with a naked sword in his hand thrust at the deceased, through the part of the door that was open, and gave him a wound on the left side of his body; and that Mr. Sayer had no sword drawn, neither did any words pass between the deceased and Mr. Noble, that gave the wound; but the deceased afterwards endeavoured to draw his own sword, then by his

side in the scabbard, but could not pull it above half way out, for want of strength, and immediately fell down; and as he was falling, the witness heard Mrs. Sayer say, that the deceased had a great many sham fits, and that this was one of them, or such like words; and when the constables were taking the prisoners away, Mrs. Sayer asked Noble, My dear, have you got my watch? he answered, My dear, I have it in my pocket.

Thomas Derham deposed much to the same purpose; and several other witnesses swore to the same effect, particularly captain Alkern, and Mr. Anthony Sherlock; who likewise swore, that Twyford should tell them, that he told the prisoner, the constables were come either for him (Noble) or himself; and that he told Noble, he might go away if he pleased.

The *Coroner* appeared, and produced the bloody sword, which was stained with blood about five inches, and appeared to be Mr. Noble's sword, with which he killed the deceased. A surgeon also swore, that the wound was the occasion of his death, and gave a description of it to the jury; and the coroner's inquest found it wilful murder against all three.

The Evidence for the Crown being all examined, the Prisoners were called upon to make their Defence.

Mrs. *Sayer* said, she was parted from her husband, on account of his ill usage of her; that he gave her the foul disease, and that they parted by mutual consent, and she had a separate allowance, and articles of separation were drawn and signed by each of them; that she knew nothing of any constables coming to Twyford's house, or that there was any warrant against her; that Mr. Noble being there was merely accidental, and that he came to her about her own private business, being her attorney; and that the wound given the deceased, was done in an instant, and she knew nothing of it, till Mr. Sayer fell down; that several of the people had sworn against her out of malice and spite; but utterly denied her telling the maid to get poison to give to her husband; and so far from aiding or abetting Mr. Noble, if she had seen his sword drawn, or known his intentions, she would have done her utmost to have prevented his killing Mr. Sayer.

Mrs. *Salisbury* said, she attended her daughter, in the Mint, which she thought a private place, from the resentment of Mr. Sayer, who threatened her daughter's life; that she had no malice or ill-will against Mr. Sayer, and wished they would have lived happily together; but he used her excessive ill, and gave her the foul disease, which obliged her daughter to go from him; that she knew nothing of any constables being in the house, or any warrant out against her daughter; that Mr. Noble came there that day to dine with them, and to endeavour a reconciliation between Mr. Sayer and his wife; that she knew nothing of the wound being given, she being at the window; that it was done in an instant, and she did not know it, till she heard Mr. Sayer fall.

Mr. *Noble* declared, he had no ill-will or malice against the deceased; that Mr. Sayer had used his wife barbarously, had beat her, and gave her the foul disease; and aggravated the deceased's carriage towards his wife. He set forth the deed of separation, and the marriage articles, arguing, that upon that deed, he did not question, Mrs. Sayer would be thought a person sole and apart from her husband at the time of his death; that Mr. Sayer could not with any justice, pretend his wife had robbed him, or run away with his jewels, &c. she having a right to them, they being reserved to her by the marriage articles, and that the deceased could have no pretence to retain either them, or his wife; as to her, she was forced to go from him, on account of his ill-usage of her, and was lawfully separated from him; he justified his being in Mrs. Sayer's company, as being her attorney and trustee; that he was with her at the time of the fatal accident in private, about business with her and Mrs. Salisbury: that he then heard an extraordinary noise in the house, and there seemed a confusion, and crowd of people assembled together in the house, but he could not tell for what; he owned, he knew Mr. Sayer was in the house, for he heard his voice before the door was broke open; the deceased breaking open the door by pulling off the bolt, and one hinge, surprized him, and the prisoners; that they all retired to the back-door thinking to escape, but were not able to get it open; and hearing such a clamour and noise without, he was flung into a terror and confusion, arising from such a desperate place as the Mint; that he then drew his sword, and stabbed the deceased as he was entering the door of the room; where he, Mrs. Sayer, and Mrs. Salisbury were; that he did not doubt justifying what he had done, notwithstanding the aggravating circumstances alleged by the counsel, for that the deceased came with an illegal and ill grounded warrant, and that Twyford the landlord never told him constables were at the door; that he knew the deceased sought his life, he having before drawn his sword on him, and once brought a pistol to his chambers, on purpose to shoot him. He set forth, that he was recommended to do Mrs. Sayer's business by a gentleman of honour, and that he had often endeavoured and solicited an accommodation between Mr. Sayer and his wife; that the articles of separation were drawn and executed before he was employed as Mrs. Sayer's attorney; and that Mrs. Salisbury had engaged him to come over that very day, to solicit a reconciliation; and that he never declared, he would stick Mr. Sayer whenever he saw him; and that Farrington the officer, swore out of malice against him.

The prisoners then called some witnesses, proving the marriage articles, and deed of separation.

Then Mr. Noble called a witness, who deposed, that the deceased, some time ago, broke open the door upon the prisoner, Mrs. Sayer,

to kill her with his penknife; that this witness was well acquainted with Mrs. Sayer, during Noble's conversation and acquaintance with her, and never knew her to be with child, or that she was bigger than usual; that the prisoner, Mrs. Sayer, before her acquaintance with Mr. Noble, was endeavouring for a divorce, in Doctors Commons; and that the deceased several times beat his wife, and some time since went to Mr. Noble's chambers, with a pistol in his hand, to kill him; and that this witness met the deceased upon the stairs, going up to Mr. Noble's chambers, which passage he had told to several others; and he proved Noble's wresting the deceased's naked sword from him, when he offered to stab him, or run him through the back; and that the deceased was cured of the foul disease.

Eliz. Saunders, servant at the Red Lion in George-street, in the Mint, swore, she was in the backside of her master's house a-washing, when the two constables came to Twyford's house; that they knocked at the door, and refused to tell their business, or whom or what they wanted; that she went in with the constables, and Mr. Sayer, to Mr. Twyford's house, and nobody else with them; that the deceased came into the house, with his sword drawn about three inches out, went up stairs with the constable, and came down again by himself, had his sword then drawn, swore he would make an end of the prisoner, Mr. Noble, broke open the door and went into the room, and fell down dead; all which she saw, she being in the kitchen; but did not know how he died.

Two men swore, that Mr. Sayer ran into the house, with his sword drawn about four inches, swearing he would kill the prisoner, Noble; and in other points, agreeing with those particulars mentioned in the affidavit which Mr. James Hannon endeavoured to suborn Reeves to swear to.

Others were called to invalidate the evidence given by Fatrington, of the prisoner Noble's swearing to stick the deceased whenever he met him.

Others swore, they were frequently in company with the prisoner Noble, and Mrs. Sayer, and never knew any disorderly, or unbecoming behaviour between them, but thought the prisoner Noble attended her only as her attorney.

Several were called to the character of Mr. Noble, and gave him a very good one, and that they never heard any ill of him.

Others were called to the characters of Mrs. Salisbury, and Mrs. Sayer, who said, they never knew any ill of them, particularly a lady, a neighbour to Mrs. Sayer, in Lisle-street, who said, she thought her a decent, well-behaved woman.

The evidence on both sides being gone through, Mr. Noble, the prisoner at the bar, desired he might have counsel as to a point of law; whether the warrant to apprehend Mrs. Sayer was not illegal; and whether by that warrant, they could enter and break open the door upon the prisoners in another's house; and whether what he did was not in his own defence? Counsel being granted him, they insisted, "That this warrant was illegal, though from a justice of the peace; that it was ill-grounded, and made without legal authority; that without any legal authority, a multitude came into the house; that the prisoners had no notice they were constables, or had any legal warrant to apprehend Mrs. Sayer; that the deceased broke open the door upon the prisoners, which was an assault upon them; and the prisoner, Noble, hearing such a tumult and noise, and numbers breaking in upon him, he drew his sword in his own defence, and unfortunately stabbed the deceased."

Therefore hoped his lordship would direct the jury to find a Special Verdict.

There were some debates between the counsel, whether the prisoners knew the constables were at Twyford's house? Upon which the queen's counsel called up again other witnesses, some of which were examined before; one proved that Twyford, the man of the house where the prisoners were, told him some days after the murder, that immediately upon the coming in of the constables, he ran through his garden round the house to the back-door, and told Mr. Noble, the constables were come, and wanted either him, or himself; that he opened the back-door to the prisoner, Noble, and said to him, Sir, you may go your way if you please.

Upon this, Twyford's examination taken before John Lade, esq. a justice of the peace, was read; "That he told Mr. Noble the constables were at the door, and wanted either him (Mr. Noble) or himself; and that he opened the back door to him, and said, (loud enough for him to hear) Sir, you may go out, or go your way, if you please, or words to that effect."

Others swore, they heard Twyford say the same thing, when he was before the justice.

John Janeway, of Suffolk-place in the Mint, Thomas Austen, Francis Cox, and John Wadsworth, all of St. George's parish, all swore, they heard Twyford say the same, before the coroner.

The evidence being finished, the Court said, that the warrant being ill-grounded was not material, illegal it could not be, for it was granted by a justice of the peace, on the oath of a person, that Mr. Sayer had been robbed of goods, &c. to a considerable value, and Mr. Sayer could justify searching for and taking his goods, and apprehending his wife, wherever he could find them; that it is plain by the evidence, that the landlord, Twyford, told the prisoner, Noble, the constables* were come

* As to the legality of the warrant, or whether proper notice was given by the constables, seems determined in Curtis's case, taken from Mr. Justice Foster's Reports, page 135, which is cited at large, as being applicable (in part) to this case of Noble's.

The Case of Richard Curtis.

"He was indicted at the summer assizes

either for him (Noble) or himself, and told him he might go away if he pleased; therefore he might pretty well tell what they came about, considering how scandalously he had lived for some time past with the deceased's wife.—If he had been there innocently, or with a good intention, as he pretends, why did not he voluntarily surrender himself to the constables; but

1756, for the town and county of Newcastle upon Tyne, for the murder of William Atkinson.

"Upon the trial the case appeared to be, that a process in the nature of a Capias ad Satisfaciendum issued against one Charles Cowling out of the town court, directed to Joseph Dixon, a serjeant at mace belonging to the court; who got John Suretees, another serjeant at mace, to go and execute it for him. Suretees accordingly went to Cowling's workshop adjoining to his house, and taking hold of him told him that he had an execution against him. Cowling demanded a sight of the process; which being refused, Cowling, with the assistance of the prisoner, by force and violence rescued himself.

"Suretees immediately acquainted Dixon with what had happened; and thereupon Dixon prevailed upon the mayor's officer to insert the name of Suretees in the process: and Suretees then went before a justice of the peace for the town and county, and made information on oath, that he did by virtue of the said process to him and Joseph Dixon directed, apprehend the said Cowling, who by wrestling and strokes got out of his hands and made his escape.

"The justice thereupon granted a warrant, directed to all serjeants at mace, constables, and other officers within the said town and county, reciting the process already mentioned; that Suretees had that day arrested Cowling by virtue thereof, and that Cowling had by wrestling and strokes rescued himself, and commanding all officers, &c. to apprehend the said Cowling, and to bring him before the justice who granted the warrant, or any other justice of the peace of the town and county, to be dealt with in the premises as the law directeth.

"Upon the receipt of this warrant, Dixon and Suretees (who were both serjeants at mace) went back to Cowling's work-shop, taking with them the deceased and one Coulson as their assistants. They found the shop doors shut; and calling to Cowling, who was there with the prisoner, informed him that they had an escape warrant against him, and required him to surrender: otherwise they said they would break open the door.

"Cowling refused to surrender: and the prisoner looking out at the window with an axe in his hand, swore that the first man that entered should be a dead man. Dixon, however, with Coulson and the deceased, broke open the shop door; and the deceased, being foremost in entering the shop, the prisoner at one blow with the axe, on the left side of the head, killed him on the spot.

"Upon this evidence the prisoner was found guilty of wilful murder. But some gentlemen of the profession expressing their doubts to the judge who tried him, he respited execution till the opinion of the other judges could be had on the case.

"In Trinity term 1757, eleven of the judges had a conference on the case, and nine of them, with whom justice Wilmot, who was absent, concurred, were clearly of opinion that the defendant is guilty of murder. Two of the judges held it to be manslaughter. All the judges present at the conference agreed that the justice's warrant, though obtained by very unwarrantable practice on the part of Dixon, and by perjury on the part of Suretees, was a legal warrant for the arresting Cowling for a breach of the peace. For in cases wherein the justice of the peace hath jurisdiction, and in this he undoubtedly had, the legality of his warrant will never depend on the truth of the information whereon it is grounded.

"They likewise agreed, that peace-officers, having a legal warrant to arrest for a breach of the peace, may break open doors after having demanded admittance, and given due notice of their warrant.

"The point on which they divided was, whether in this case such due notice had been given?

"The nine judges were of opinion, that no precise form of words is required in a case of this kind. It is sufficient that the party hath notice that the officer cometh not as a mere trespassor, but claiming to act under a proper authority. And if after this notice, he be resisted, and he or any of his assistants killed in consequence of such resistance, it will be murder; provided it cometh out in evidence that the officer had a legal warrant.

"The person making such resistance after such notice, doth it at his own peril. He acteth avowedly and deliberately in defiance of the ordinary course of justice. And therefore it will be no excuse on his part to say, that he did not know or believed that the officeer came armed with a proper authority. This rule is founded on the policy of the law, and upon every principle of government.

"The judges who differed thought that the officers ought to have declared in an explicit manner what sort of warrant they had.

"They said that an escape doth not *ex vi termini*, nor in the notion of law, imply any degree of force or breach of the peace; and consequently the prisoner had not due notice that they came under the authority of a warrant grounded on a breach of the peace. And for want of this due notice the officers are not to be considered as acting in discharge of their duty, but as mere trespassors.

"On this question alone the case turned.

"But a few of the judges who conceived the fact to be murder, were of opinion that it would have been so, even admitting that the officers could not have justified the breaking open the

the many declarations the prisoner had made against the deceased, seemed to carry rancour and malice against him; that it was certain the prisoner, Noble, knew Sayer was in the house, for he has owned he heard his voice before the door was broke open; therefore it seemed a determined thing in him to destroy Mr. Sayer, who was killed, and if you believe the evidence, by the prisoner, Noble's own hand.

The Chief-Justice summed up the evidence with great clearness and impartiality, and seemed to direct the jury to find Noble guilty; and there being not sufficient evidence to convict the other prisoners, for the shortness of time would not allow of any consulting or confederating together to destroy the deceased, directed them to be acquitted. The judge behaved with great patience and temper during this whole trial, which lasted from six o'clock in the morning, until one next morning; when the jury were admitted to have some refreshment at the bar, while the Court was sitting; then an officer was sworn to keep the jury, who went out between one and two on Saturday morning, but did not agree on their verdict till the same morning about ten o'clock; which was, that Richard Noble was Guilty on all three indictments; Mary Sayer, and Mary Salisbury, Not Guilty.

On the acquittal of the two ladies, they behaved so overjoyed, as to be taken notice of by the Court, who reprimanded them for their indecent behaviour.

Counsel then moved that Mrs. Salisbury and Mrs. Sayer might not be discharged, without giving sufficient bail to appear at any time within twelve months, to answer to any other indictment, or an appeal. The Court ordered they should give sufficient bail for their appearance, themselves in 1,000*l.* a-piece and their sureties in 500*l.* each, who were Mr. Stephen Hodges, Mr. Joseph Stocker, Mr. Thomas Arne, and Mr. John Hodges. Upon their being discharged, the two ladies returned to London in a coach, taking with them the turnkey to prevent any insult from the mob, which was pretty numerous. Whilst in the coach, the ladies seemed overjoyed at their deliverance, and told the turnkey, that the affair turned out just as they would have had it.

Monday, March 16, the prisoner Noble was brought to the bar, and asked what he had to say why judgment should not be given, and execution awarded? On which he moved in arrest of judgment.

"My lord, I humbly move in arrest of judgment, for that I apprehend I have had a mistrial, and that my trial has been contrary to the law of England, in that we were severed in our challenges, and yet were tried together by the same jury;" and said, that in Charnock, King, and Keys' trial, [See their Case, vol. 12, p. 1378.] lord chief justice Holt said, "You may challenge thirty-five peremptorily, without cause; but if you do not all agree in the same challenge, ye cannot be tried together by the same jury, but the Court must separate you, and try you every one singly." And quoted other parts of the trial, and desired that his counsel might speak to it.

But the Court over-ruled the motion, alleging, that the lord chief justice Holt's reason, in the case of Charnock, King, and Keys, was, that in case each of them severally challenged thirty-five, three times thirty-five would amount to one hundred and five, and then they must be obliged to sever them, (as the Court were near obliged to have done in the present case) for default of jurors.

Then Mr. *Noble* made the following Speech:

"My lord; I am soon to appear, and render an account of my sins to God Almighty; if your lordship should think me guilty of those crimes I have been accused, and convicted by my jury, I am sure, then, your lordship will think that I stand in need of such a preparation, such a humiliation for my great offences, such an abhorrence of my past life, to give me hopes of a future one; that I am not without hopes that it will be a motive to your lordship's goodness, that after you have judged and sentenced my body to execution, you will charitably assist me with a little time for the preservation of my soul.

"If I had nothing to answer for, but killing Mr. Sayer with precedent malice, I should have no need to address myself to your lordship in this manner. It is now too late to take advantage by denying it to your lordship, and too

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door. Here was no arrest actually made; the officers, even admitting that due notice had not been given, had committed a bare trespass in the house of Cowling, where the prisoner happened to be; no trespass done to the property of the prisoner, no attempt on his person.

"But admitting that a trespass in the house with an intent to make an unjustifiable arrest on the owner, could be considered as some provocation to a stander-by; yet surely the knocking a man's brains out, or cleaving him down with an axe on so slight a provocation, savoureth rather of brutal rage, or, to speak more properly, of diabolical mischief, than of human frailty. And it ought always to be remembered, that, in all cases of homicide and sudden provocation, the law indulgeth to human frailty, and to that alone.

"Besides, the circumstance of the prisoner's standing with the axe in his hand, declaring before any attempt to enter the shop, 'That the first man who did enter should be a dead man,' sheweth it to be an act of deliberation as well as cruelty.

"And where the circumstances of deliberation and cruelty concur, as they do in this case, the fact is undoubtedly murder; as flowing from a wicked heart, and mind grievously depraved, and acting from motives highly criminal. Which is the genuine notion of malice in our law." *Former Edition.* See too East's Pl. Cr. ch. 5, s. 78.

near my end to dissemble it before God. I know, my lord, the danger, the hell, that I should plunge myself headlong into; I know I shall soon answer for the truth I am now about to say, before a higher tribunal, and a more discerning judge than your lordship, which is only in heaven; that I did not take that advantage to kill Mr. Sayer, by a thought or apprehension, that I could do it under umbrage of the law, or with impunity; and nothing was more distant from my thoughts, than to remove him out of the world to enjoy his wife (as was suggested) without molestation: Nor could any one have greater reluctance, or remorse, from the time of the fact to the hour of my trial, than I have had, though the prosecutors reported to the contrary; for which I heartily forgive them.

"My counsel obliged me to say on my trial, that I heard Mr. Sayer's voice before he broke open the door: I told them, as I now tell your lordship, that I did not know it was him, till he was breaking in at the door, and then, and not before, was my sword drawn, and the wound given, which wound, as Dr. Garth informed me, was so very slight, that it was a thousand to one he died of it.

"When I gave the wound, I insensibly quitted the sword; by which means I left myself open for him to have done what was proved, and was so likely for him to have effected, viz. to have stabbed me, which are circumstances that manifest the greatness of my surprize.

"When I heard the company run up stairs, I was alarmed, and in fear; the landlord telling me instantly thereupon, that the house was beset either for me or himself, added to my confusion; I then never thought or intended to do mischief; but first bolted the fore-door, and then bolted and padlocked the back-door, (which was half glazed) and began to fasten the shutters belonging to it, designing only to screen myself from the violence of the tumult. When he broke open the door, and not till then, I perceived and knew he was present: And his former threats and attempts, which I so fully proved on my trial (and could have proved much fuller, had not madam Salisbury's evidence been taken from me), made my fear so great, and the apprehension of my danger so near, that what I did was the natural motion of self-defence, and was too sudden to be the result of precedent malice; and I solemnly declare, that I did not hear or know from Twyford the landlord, or otherwise, that any constable was attending the deceased, till after the misfortune happened.

"It was my misfortune, that what I said, as to hearing the deceased's voice, was turned to my disadvantage by the counsel against me; and that I was not intitled to any assistance of counsel to enforce the evidence given for me, or to remark upon the evidence given against me, which, I do not doubt, would have fully satisfied your lordship and the jury, that what happened was more my misfortune than my design or intention.

"If I had been able under that concern, to remark upon the evidence against me, that Mr. Sayer was but the tenth part of a minute in breaking open the door, it could not then be well supposed by the jury, that I was preparing myself, or putting myself in order to do mischief, which are acts of fore-thought and consideration, which require much more time than is pretended I could have had, from the time I discovered Mr. Sayer; for even from his entry into the house, to the time of the accident, did not amount, as I am informed, to more than the space of three minutes. But I did not discover him before the door gave way.

"I wish it had been my good fortune, that the jury had applied that to me, which your lordship remarked in favour of the ladies, that the matter was so very sudden, so very accidental, and unexpected, that it was impossible to be a contrivance and confederacy, and unlikely that they could come to a resolution in so short a time: I do not remember your lordship distinguished my case, as to that particular, to be different from theirs, nor was there room left for it; for it is impossible for your lordship to believe, that I dreamt of Mr. Sayer's coming there at that time; but, on the contrary, I fully proved to your lordship, that I went there upon another occasion, that was lawful and beneficial for the deceased; and I had no more time to think or contrive, than the ladies had to agree, or consent.

"If any thing could be construed favourably on the behalf of such an unfortunate wretch as myself, I think the design I had some time before begun, and was about finishing that day, might have taken away all suspicion of malice against Mr. Sayer.

"Must it be thought, my lord, that I only am such a sinner that I cannot repent, and make reparation to the persons I have injured? It was not denied, but I strongly solicited a reconciliation between Mr. Sayer and his lady; and if this had tended to procure me an easier access to Mrs. Sayer, it would have been such a matter of aggravation against me, that it could not have escaped the remark of the counsel against me, nor the sharpness of the prosecutors present in court; with both I transacted, and to both I appealed, particularly to Mr. Nott, to whom, but the day before the accident, I manifested my desire of having them live together again: and therefore, my lord, it should be presumed I laboured to be reconciled, and not to revenge myself on Mr. Sayer.

"Your lordship, I hope, will observe so much in my favour, that it was so far from being a clear fact in the opinion of the jury, that they sate up all night, and, believing there was no malice at that time, told your lordship they intended, and were inclinable to find it Manslaughter; and doubting the legality of the warrant, to find it special.

"I hope this will touch your lordship's heart so far as not to think me so ill a man, as to deserve what the best of Christians are taught to pray against—a sudden death.

"I confess I am unprepared; the hopes of my being able to make a legal defence, and my endeavours therein, having taken up my time, which I wish I had better employed, I beg leave to assure your lordship, upon the words of a dying man, that as none of the indirect practices to get or suppress evidence were proved upon me, so they never sprang from me; and I can safely say, that my blood, in a great measure, will lye at their door that did it; because it drew me under an ill-imputation of defending myself by subornation of perjury.

"I would be willing to do my duty towards my neighbours, as well as God, before I die.

"I have many papers and concerns (by reason of my profession) of my clients in my hands, who will suffer if they are not put into some order. And nothing but these two considerations could make life desirable under this heavy load of irons, and restless remorse of conscience for my sins.

"A short reprieve for these purposes, I hope will be agreeable to your lordship's humanity and Christian virtue; whereupon your lordship's name shall be blessed with my last breath, for giving me an opportunity to make peace with my conscience and God Almighty."

Then the Court passed sentence on him, and told him he should be allowed a reasonable time for the purposes he mentioned, which they hoped he would make a good use of; and ordered his execution for Saturday, March 28. When the gaoler came (with a barbarity natural to those fellows) to load Mr. Noble with irons, he was very much confounded; for though he had given, he said, near 200*l.* to all the crew about him to have some favour, they loaded him with the heaviest irons, and cursed him as they were putting them on. Thus the ladies left the dear partner of their pleasures and perils bound with harder chains than those of love, his hands manacled, his legs fettered, his friends abandoning him, his very counsel and solicitors declaring, they would not have been concerned for him had they known of the adultery; yet all this he bore with uncommon patience, but shewed great concern for being so basely deserted by the very women, who brought upon him all his misfortunes.

He behaved very decently, whilst under sentence of death; and would often say, he did not think his crime murder in the eye of the law, and continually exclaimed against Farrington the bailiff's evidence. One thing was very particular, Mrs. Sayer came to Kingston, the day before he was executed, in the disguise of a servant-maid, and sent a letter to him, giving him notice she was come, and so disguised, that if he would see her, she could come easily to him, notwithstanding the orders the gaoler had not to admit her. Noble, on reading the letter, did not seem averse to seeing her; but the divines who attended him, perswaded him from it; and he sent her word, that he was a man still, and liable to passions; she had time, and might repent; but he had but a very short time, and that must be employed about the concerns of his soul. It is certain, he saw neither of the women after his conviction, though they were soliciting a reprieve for him all the time.

Accordingly, Saturday, March 28, 1713, he was executed* at Gallows-hill, near Kingston; when he delivered the following Account to the three clergymen that attended him.

The True Copy of the original Paper signed by Mr. Richard Noble, which he designed for his Last Speech, delivered to Mr. Cooke, Curate of Kingston, and Ordinary of Surry; another to Mr. Broughton, Vicar of Kingston: and a third to the Rev. Mr. L'Herondell: With a particular Account of his Behaviour some days before his Execution, by all the aforesaid Clergymen.

An Account writ by Richard Noble, the afternoon before his Execution.

"I have since my confinement (under sentence of death) to this very hour, been under the greatest expectation of a short reprieve; especially, for that I was credibly assured the lord chief-justice Parker had promised to grant it for my clients' sake, in case they would make affidavit before him, of their having papers and writings in my hands; which condition (I am told) was performed on their part.

"If such promise was made, I heartily forgive him in not performing it.

"This disappointment I assign as the true reason of my being very brief in the Account, which otherwise might have been incumbent on or at least have been expected from me to have enlarged upon.

"I have been often told, that it hath been reported I have acted criminal indecencies with Mrs. Salisbury and Mrs. Elizabeth Nevil (the mother and sister of Mrs. Mary Sayer), and that both or one of them were, or was privy to, or countenancing of such unlawful acts of mine with the said Mrs. Sayer. I think it my duty to declare as I do, that such report is false.

"As to the murdering Mr. Sayer, I do declare, that Mrs. Salisbury, or Mrs. Sayer, did not draw the sword with which I unfortunately killed him: nor was either of them aiding, directing, or advising of such murder: nor did either of them open the door whereat I killed him; though the contrary hath been suggested to me by one of the sisters of the deceased.

"I am told, that it is reported I was married to Mrs. Sayer whilst we were in the Marshalsea, and that she hath been with me since my condemnation. I do declare, that such reports are false, and that I never was married to the said Mrs. Sayer.

* Upon occasion of the execution of Noble, bishop Fleetwood published, without his name, a Sermon, from the second book of Samuel, ch. 12, v. 5. See his Works p. 657, and the Table of Contents.

"As to what relates chiefly to myself, time will not permit my saying so much as I intended. I hope that my dying words may make a deep and sensible impression on the minds of such persons as may read this paper, that such as are going on in a course of sin, may be awakened from their lethargy, and deterred from the continuance in or commission of any known sin against the living God; but more especially those who have been partners with me in my sins.

"I would not extenuate or palliate the crime of murder which I committed: therefore must say, that though the fact was committed under the greatest surprize, and without any premeditated malice, or design, by removing him out of the world to have the freer access to his wife, (which gave me reasonable hopes of my escaping the justice of human laws); yet I must own that the judgment of God, in bringing me to this deserved and shameful death, is very just; and I do declare that I never had, nor ever knew that Mrs, Salisbury, Mrs. Sayer, and Mrs. Nevil, or any of them, had any design to kill Mr. Sayer by poison, or otherwise.

"I have secretly and wilfully committed many great and most heinous sins against God, besides that for which I am now to die. God suffered me to act those sins for several years, without punishing me himself, or suffering me to fall under the hand of human laws. I had frequent checks of conscience to recal and restrain me from committing further sins; but I stifled or diverted those good thoughts, and continued the practice of my beloved sins with pleasure.

"I indeed have made many resolutions to God of repentance and conversion, but soon broke through them, which is a great aggravation of my offences; and those sins, and those aggravations undoubtedly justly provoked God to suffer me to act that horrid crime, for which I am now to die.

"I heartily beg pardon of the relations of the deceased, for the injury done them by the murder of Mr. Sayer.

"I heartily beg pardon of all others that I have injured by any secret or open means.

"I heartily forgive every person that has done me any injury; especially those who strained their consciences to affect me on my trial. I pray God give them grace to repent of those and all other sins; lest by such and other provocations against God, they destroy both their bodies and souls.

"I have had very good help and instructions from some worthy divines, and other good Christians that have attended me since my condemnation; who have (I believe) done my soul much good, for which I am very thankful; and may God have the glory by it, and they their due reward.

"I have (since my condemnation) occasionally been under the utmost disorder and perplexity, for having so many and such great sins to repent of in so short a time; but as my endeavours for a longer time have proved ineffectual, so I hope that God Almighty will accept, in his great mercy, that small space which he, in his wise providence, hath thought fit to allow me.

"And whereas I have been told, that I was thought to be one of the sect of the Free-Thinkers, I do utterly deny the same, and that I ever so much as read any book published by the Free-Thinkers.

"Perhaps it may be observed, that this my dying speech is not so pathetical as that which I spoke when I received sentence of death. Then I was in hopes of preserving my life; but now, being satisfied to the contrary, my thoughts are turned another way (to wit) to make my peace with my conscience and my God.

"But as to the truth of this my dying speech, I call God Almighty to witness, that I know not of the least falsity therein, as I hope for eternal salvation.

March 27. "RICHARD NOBLE."

"Being under the obligations usual on those, that receive papers from dying persons to be published, and having faithfully discharged our trust therein, we have found some other reasons to subjoin to it a further brief relation of Mr. Noble's behaviour and conduct during the last week of his life, wherein we all frequently visited him.

"So far as any or all of us could possibly discern, or collect from his many answers and declarations from his whole discourse, and the tenor of his constant devotion, he repented from the bottom of his heart of the manifold and heinous sins of his life; that crying sin especially for which he died.

"He professed an unshaken belief of the truth and importance of the Christian religion, and a stedfast faith in, and reliance on the only atoning merits of his Redeemer.

"He was desirous, and resolute to die in the Communion of the Church of England, and in perfect charity with all the world; he appeared under a calm resignation to the sovereign will of God, and not without increasing hopes of pardon, as his death approached nearer; to the very article of which his disposition was such as himself had often prayed for.

"We pray to God, that these last sentiments of his (who is cut off by the just judgment both of God and man, in the 28th year of his age) may have that happy and peculiar effect, which (next to his own salvation) he constantly had in view; the reclaiming those in particular (we mean) who have at any time, or in any manner, been partners or associates with him in wickedness. We find this briefly hinted in his Paper; but we know, he thought on it frequently, and laboured much about it. We could produce instances and proofs of all we say: but we hope this general account will suffice to answer the importunity of some; and perhaps to silence the importunate clamours of others, who have added very false, as

well as needless aggravations to his guilt." *March* 30, 1713.

THOMAS COOKE, ordinary of Surrey and curate of Kingston.
JOHN BROUGHTON, M. A. vicar of Kingston.
F. ALEX. L'HERONDELL, chaplain to one of her majesty's regiments.

The following Case being reckoned curious, and a proper addition to Mr. Noble's motion in arrest of judgment, is here inserted.

The CASE of Mr. RICHARD NOBLE impartially considered: abstractly from the Man, or Crime, but merely as to the Law, in relation to the Motion by him made, on Monday the 16th day of March, 1712, at Kingston Assizes, in Arrest of Judgment: and the Reason given for over-ruling the same confuted. By a Student of the Inner-Temple.

Richard Noble, gentleman, Mary Salisbury, and Mary Sayer, widow, were indicted; he, for the murder of John Sayer, esq. on the 29th day of January, Anno 11° Annæ Reginæ; Salisbury, as present, aiding, assisting, and abetting the same; and Mary Sayer, widow of the deceased, for petty-treason, as being present, aiding, assisting, and abetting the murder of her said husband; and the said Noble, on the coroner's inquest for the murder of the said John Sayer, and for manslaughter on the statute of stabbing: and on Thursday the 12th day of March, 1712, were severally arraigned, and severally pleaded Not Guilty, and put themselves on trial, to which they were brought the next morning; and on their trial they severally challenged of those returned to serve upon the jury, viz. Richard Noble 20, Mary Salisbury 20, and Mary Sayer 35, peremptorily; after which a jury was sworn, and charged with them all jointly; and on a long hearing found Richard Noble Guilty of the facts in the indictments, and also on the coroner's inquest; and found Mary Salisbury and Mary Sayer Not Guilty.

Whereupon, on Monday following, the 19th of March, Richard Noble was set to the bar, and demanded what he could say, why judgment should not be given, and execution awarded? Upon which he moved in arrest of judgment in these or the like words:

"My lord, I humbly move in arrest of judgment, for that I apprehend I have had a mistrial, and that my trial has been contrary to the law of England, in that we severed in our challenges, and yet were tried together by the same jury: and, to warrant this opinion, I have in my hand the trial of Mr. Charnock, King, and Keys. There were, my lord, then upon the bench, the lord chief justice Holt, the lord chief justice Treby, the lord chief baron Ward, Mr. justice Nevill, Mr. justice Powell, and Mr. justice Rokeby; and there the lord chief justice Holt, directing himself to the prisoners, said thus:

"'Look ye, you that are the prisoners, every one of you has the liberty to challenge thirty-five of those that are returned to serve upon the jury that is to try you, without shewing any cause: now, if you will all join in the same challenge, then we can try you all together as you are altogether jointly in the same indictment, and save the time and trouble that will otherwise be unavoidable; but if you will not join in the same challenge, but every man challenge for himself, as by law he has liberty to do, we must be forced to try you single; and therefore we would know of you, whether you design to join in your challenges or not.' [See in this Collection, vol. 13, p. 1389.]

"And in the same page, 'I tell you what the law is in such cases; you may, every man of you, challenge thirty-five peremptorily, without cause; but if you do not all agree in the same challenges, ye cannot be tried together by the same jury, but the court must separate you, and try you every one single.'

"And again, 'Do you understand what is said to you, Mr. King and Mr. Keys? Every one of you may, without shewing any cause, except against thirty-five of those that are returned of the jury, which are to try you, if you have no mind that those should be sworn; but then, if each of you do severally challenge thirty-five, ye cannot be tried by the same jury.'

"And there is a case to the same purpose in one of the year-books, I think it is in 9 E. 4, fol. 27, but desire that my counsel may speak to it."

This is the substance of what Mr. Noble then said; upon which, being asked who were his counsel? He answered, Mr. Darnall and Mr. Bonwick, who were by the Court readily assigned to be his counsel; but (for what reason I cannot well apprehend) could neither of them be prevailed on to speak to it.

So that although it was agreed and allowed, that the words were as full and clear as they could be penned, the Court soon over-ruled the motion, alleging, that the lord chief justice Holt's reason in the case of Charnock, King, and Keys, was, that in case each of them severally challenged thirty-five, three times thirty-five would amount to 105, and then they must have been obliged to sever them (as the Court were near obliged to have done in the present case) for default of jurors; and Mr. Noble, after a speech by him, tending to obtain a short reprieve, had judgment given against him.

I have, as carefully as I could, fairly and indifferently stated the case, and shall now proceed to consider it as briefly as possible.

Challenge of a juror is an undoubted right of the subject, and was at the common law; and therefore, it is to be presumed, to have been as ancient as trial by juror, and was unquestionably at first allowed 'in favorem vitæ,'

and to give the prisoner an opportunity, as it were, to chuse his jury, so as he exceed not the number prescribed by the law: and, consequently, I take it, at the common law, every man, of right, might and still may, the same having been altered by no statute that I can find, as to a commoner, demand to be tried single, although jointly indicted in the same indictment with others; and that for these reasons, among others:

First, for that in case an innocent person should unhappily be indicted with a criminal, it might be a means to prevent the jury, from the evidence given against the criminal, to be inveigled or drawn aside, to give too hard a verdict on the guiltless.

Secondly, for that when a pannel is returned, the prisoner (who, as was said before, may in a manner chuse his jury) will otherwise be deprived of that right: As if two or three are indicted, and the first perceive that in the beginning of the pannel there are such returned, as he has great reason to suspect are partial, but by challenging has a prospect to bring himself to those in the pannel, which he has reason to apprehend are indifferent; if, when he has challenged the number the law allows him, and his hands, as it were tied up, the other indicted with him shall come in and take off all those indifferent men, and so leave him over to those he had as much (or more) reason to suspect as those he had before challenged; which is a mischief, and that the law abhors, for the juror returned may have malice to one, and be indifferent as to the other; and so is the 9 E. 4, fol. 27, and the plaintiff or prosecutor no ways prejudiced, for he might have sued several *ven. fac.* and thereby have been aided. And so is the book expressly.

Thirdly, for that the Court cannot accept of a joint plea, nor receive a joint verdict; but the plea of Not Guilty, although it be the general issue, yet in its nature and effect is several.

And so in trespass against several; they may every one come and plead several pleas by several attornies, and have several trials: And reasonable, for otherwise a plaintiff might join one in the action, who could oblige all the others to stand or fall by his confession, defence, or plea. And as in trespass they may sever in their pleas, so in treason or felony Not Guilty is a several plea, nay, and amounts to a special plea; and the prisoners, or any of them, shall have the same advantages, as if he or they had pleaded specially to all intents and purposes whatsoever. Dr. St. cap. 48, fol. 150, 1, 2.

From whence I argue, that it is the right of every subject to demand and have a separate trial, in criminal cases, if so he be minded. For,

If three are indicted of felony, one challenges the whole number twenty, and those twenty are to be drawn, that is, set aside and not suffered to pass upon the other; and the second challenge twenty, those are to be drawn or set aside in like manner; and the third challenge likewise twenty, who must by the same rule be likewise drawn or set aside, as to all; this will amount to sixty challenged by the first; and as the first and second prisoners have the benefit of the challenges of the third, so has the third the benefit of theirs. This tantamounts to a challenge of sixty by each, and thereby endangers their being pressed or hanged for challenging above the number prescribed by the law; which the Court is by no means to suffer.

An appeal against Beauchamp, and several others, who plead Not Guilty, and one *ven. fac.* for all issued return, &c. at which day one of the defendants challenge a juror peremptorily, and the other defendants say nothing; the juror shall be sworn against them, and the reason there given is, for that otherwise they might be delayed of their acquittal for ever; a mischief, inconvenience, and wrong: And therefore the book goes on, and says, If covin be between me and two others, that I bring an appeal against them and another, to the end the other shall be detained in prison, &c. in that case, if I have a joint *ven. fac.* &c. and one challenge peremptorily; and if he remain for default of jurors, then at another day may the other do in the same manner; and then, when they have taken their peremptory challenges, still one of them may challenge with cause, and I will commit this challenge, &c. and so the three shall remain in prison for ever. If the challenge of one shall be for all, &c. And the doubt there was, whether the Court could sever them, it being in an appeal, and the *ven. fac.* joint? And by all the justices of the one bench, and the other, it was held, that because the *ven. fac.* was joint, the challenge of the one is for all, for that he could not be drawn as to one, and taken against the other; and the plaintiff ought to have had several *ven. fac.*

And afterwards the plaintiff challenged the array, which was quashed; and the plaintiff prayed several *ven. fac.* against every one of them to the coroners; which, by justice Jenny, he could not have in that case, for this reason only, because the plaintiff had elected to have a joint *ven. fac.* The plaintiff notwithstanding prayed to have several *ven. fac.* at their peril. Which plainly shews, that the law was against them as to the other. 9 E. 4, fol. 27.

And it was there said, that at a gaol-delivery, if an inquest be demanded to pass upon two or three men, and one challenge peremptorily, then the clerk ought to sever the felons, every one by himself. And there seemed to be a difference (and so is the book) where there are several plaintiffs, &c. because if a man be found favourable to one, he is favourable to both, for that their title is joint: But otherwise it is of defendants, where a man may have favour or malice to one, or not; or be indifferent to the other. 9 E. 4, fol. 27.

Appeal against the principal and accessary, who plead Not Guilty, and the accessary challenge the array, and the principal said nothing; and because the array was quashed on his chal-

lenge, Hankford would not take the inquest against the other; and the reason was, because the *ven. fac.* was joint, and the plaintiff might have had several *ven. fac.* 4 H. 4, 58.

And in Banco Reg. Thimelby and Gray were arraigned on an indictment of robbery, as principles, who severally pleaded Not Guilty, and severally put themselves upon their country; upon which a *ven. fac.* was returned this term, and the jury appeared, and three of the jury were sworn against both, and Thimelby challenged the four next without cause, or without saying peremptorily; and Gray would not challenge them, for which Thimelby was withdrawn from the bar; and the four who were challenged by Thimelby were sworn against Gray, and so many more, till twelve were charged on him, who found him Guilty: And Saunders moved, whether this was a right trial or not? For that there was but one *ven. fac.* awarded, nor but one pannel returned; and one juror cannot be drawn out of the pannel, and in the same pannel be allowed: But by the opinion of all the justices of both benches, the trial was good, for that no judgment was given, that the jurors that were challenged by the one should be drawn, but, that they should stand aside for a time; and were not clearly discharged by the court; and for that the *ven. fac.* for the king differ from *ven. fac.* in an appeal. Dyer, fol. 152, pl. 8.

And although in 1 H. 5. 10, it is ruled by the opinion of the Court, that a juror on indictment may be challenged by one of the defendants, and stand against the other, &c. that is, it is no principal cause of challenge in one defendant to say the other defendant had before challenged him. And so is the book to be taken, and the law is agreeable thereto, and the reason there given fully explains it so to be intended, viz. for that they are several pannels and inquests in law; and therefore, if one defendant had appeared on an indictment, and the other defendant had made default, yet the Court would have proceeded against him who appeared, although it may be otherwise in an appeal.

Which plainly proves the Court ought to sever the prisoners on indictment, where they will not join in their challenges.

And in the trial of the Regicides; Harrison, Scroop, Jones, Clements and Scot were set to the bar to be tried, and sir Thomas Allen was called and sworn; then sir Joshua Ash was called, and Mr. Scroop excepted against him: then sir Jeremy Whichcot was called, and Mr. Harrison excepted against him; James Halley, esq. being next to be sworn, Mr. Scot excepted against him: Whereupon the Court (speaking to the prisoners) said, "If you will not agree in your challenges, we must be forced to try you severally." And Henry Mildmay, esq. being called next, Mr. Scroop excepted against him: Whereupon the Court said, "We must needs try them severally, therefore set them all aside but Harrison." Which was done, and the several persons which before had been called and excepted against, were again called, and excepted against by Mr. Harrison. [See his Trial, in this Collection, vol. 5, p. 1009.]

And so in Mr. Scroop's case, vol. 5, p. 1095. Jones, Scroop, Scot, Gregory, Clements, and Carew being set to the bar, sir Thomas Allen was called, and his hand being on the book, Scroop challenged him; and thereupon the lord chief baron spoke thus to the prisoners: "That you may not mistake, if you challenge in this manner, and do not join in your challenges, we must try you severally, one after another: I must tell you the course of the law; if one challenge one, and another challenge another, we must sever, and go to trial one by one. Call the next." The clerk called sir Henry Worth, and Scroop challenged him; upon which the lord chief baron replied, "Then we must go on severally, set all aside but Mr. Scroop." And directing himself to Mr. Scroop, said farther, "Mr. Scroop, you may challenge particularly whom you will, till you come to thirty-five; if you go beyond that number, you will lose the benefit of the law."

And in that of Carew, Scot, Jones, and Clements: They being at the bar, the Lord Chief Baron demanded of the prisoners, Whether they were all agreed as to their challenges? who answered, No. "Then (said the Lord Chief Baron) we must do as before, sever you, and go to trial severally:" And directed that the three should be taken away, and that Mr. Carew should be let stand at the bar.

And indeed, through the whole course of the proceedings on the trial of the Regicides, the Court took great care of the several prisoners, that none of them might be any ways prejudiced, either by challenging too many (viz. more than the law allows) of the jury, or any other forms of law, as a matter perfectly incumbent on the Court to observe, take care of, and prevent.

And now I beg leave to observe, that the reason the Court gave in Noble's case, was not that the lord chief justice Holt grounded his opinion on; for that in fol. 1 of Charnock's trial, it appears that above eight-score were by the sheriff returned to serve on that jury, consisting of baronets, knights, esquires, and gentlemen; so that it plainly appears (they having been called over, sitting the court) that in case each of the prisoners had challenged thirty-five, amounting to one hundred and five in all; yet would there have been a sufficient number of jurors, to wit, above fifty-five, left to have passed upon, and tried the prisoners.

And the words of the lord chief-justice Holt in Mr. Charnock's trial, "We can try you all together, as ye are all together jointly in the same indictment, and save the time and trouble, that will otherwise be unavoidable; but if you will not join in the same challenges, but every man challenge for himself, as by law he has liberty to do, we must be forced to try you single, and therefore, &c." can bear no other construction, for the word

'unavoidable' is, what must happen or come to pass, notwithstanding any accident or intervening circumstances or conjuncture whatsoever: And, in that sense, I make no question, his lordship spoke them; for otherwise, several other expressions, no doubt, would have occurred, and been used by his lordship, as 'it might be necessary,' and the like.

The often repetition of the same thing, has also a great weight to enforce this observation.

And this reason clearly to me appears, to be the foundation of the case in Plowden, that though the pannel be joint on indictment, and tales awarded, yet the Court (who are ever to be of counsel for the prisoners, to give them law and justice, 2 Inst. 178, and not permit any inconvenience to happen to them in forma of law, Trial of Charnock *et al.* Dr. & St. c. 48, p. 150, 1, 2.) may and (as I humbly apprehend) ought, in case the prisoners sever in their challenges, to sever the pannel, and prevent not only the inconvenience in that case mentioned, but many other, Plow. Com. 100, 101; 2 Hale's Pl. Cr. ch. xxxiv.

And this is the more to be relied on, for that in an appeal against one Woodlark, the defendant took so many challenges, that the jury remained against the defendant, by default of jurors, and resolved, that in an appeal of murder, rape, or felony, there may be had a larger number than the principal pannel returned immediate, viz. what number the justices please to award, in regard the defendants may challenge peremptorily; and therefore the justices award a tales of 40. 14 H. 7, fol. 716, tit. Appeal. And so of an indictment, 2 Hale's Pleas of the Crown, ch. xxxiv. Finch's Law, c. 36, fo. 415, and that the stat. Westm. 2, c. 38, does not extend to criminal cases or indictments. Vane's case, Kelyng 7, 16. S. C. Vol. 6, p.

And the practice has constantly been, and was so resolved at the Restoration, by a great number of justices, upon mature deliberation, that if several prisoners be put upon one jury, and they challenge peremptorily, and sever in their challenges, that then he who is challenged by one is to be drawn against all, because the pannel being joint, one juror cannot be drawn against one, and serve for another; but in such case the pannel might be severed, and that the same jury may be returned between the king and every one of the prisoners, and then they are to be tried severally, and there the challenge of one prisoner is no challenge to disable the juror so challenged against another. And the case of Dr. Ellis's servant, Plow. Com. 100, 101, was agreed to be good law, as to the severing the pannels in that case. And accordingly, in the trial of Harrison, Scroop, Carew, and other the regicides, who challenged peremptorily, and severed in their challenges, the pannels were severed, and they were tried severally. [Kelyng's Reports, fo. 9, 10. And the Trials of the Regicides in vol. 5, of this Collection.]

And throughout all the books there appears to be no dispute, but that where the prisoners on indictment challenge severally, the Court ought to sever them in their trials. But it plainly appears, the only question was, how, or in what manner that was to be done, the *ven. fac.* and pannel being joint? But that objection being once removed, the law is plain, that the trials in all such cases are to be severed, or the prisoners cannot legally be tried at all.

And therefore I humbly submit it to the judgment of the learned in the law, whether, in the principal case, (not as to the fact, which I pretend no ways to meddle with) although judgment has passed on the prisoner Noble, yet he having before sentence moved this matter in arrest of judgment and likewise, as I have been credibly informed, (my coming into court being just after that was over-ruled) having desired and earnestly pressed to be tried separately and apart from the other two, there be not room to respite execution till the point be settled and consideration had what may be necessary farther to be done therein. And the rather, for that in the case of Hopkin Hugget, on a special verdict found at a gaol delivery at Newgate, 25 April, 1666, 18 Car. 2, on an indictment of murder, to this effect: that John Berry, and two others with him the day and place, &c. had *de facto*, but without warrant (for aught appeared) impress a man, unknown, to serve in the wars against the Dutch nation; that thereupon, after the unknown man was impress, he, with the said John Berry, went together quietly into Cloth-fair; and the said Hopkin Hugget and three others, walking together in the rounds in Smithfield, and seeing the said Berry and two others, with the man impress going into Cloth-fair; instantly pursued after them, and overtaking Berry and the impress man, and the two other men, required to see their warrant, and Berry shewed them a paper, which Hopkin Hugget and the three others said was no warrant; and immediately the said Hopkin Hugget and the three others drew their swords, to rescue the said man impress, and did thrust at the said John Berry, and thereupon the said John Berry, and the two others with him, did draw their swords and fight together, whereupon the said Hopkin Hugget did give the wound, &c. to the said John Berry, whereof he instantly died: And if upon the whole matter the said Hopkin Hugget be guilty of murder, they find so; if of manslaughter they find so, &c. And afterwards the opinion of all the judges of England, met at Serjeants-inn, in Fleet-street, being desired in the case, (having had copies of this special verdict sent to them) whether they held it murder or manslaughter? And there being a difference in their opinions, viz. the lord chief justice Bridgman, lord chief baron Hales, Mr. Justice Atkins, Tyrell, Turner, Brown, Archer, and Rainsford, were of opinion as then advised, but not to be bound by it, that it was no murder, but only manslaughter; and gave some reasons to support their opinions: But the lord chief justice Kelyng, Mr. Justice Twisden, Wyndham, and Morton, were of another opi-

nion, and held it to be murder, and gave their reasons for it: After which difference the lord chief justice Kelyng granted a Certiorari, to remove the cause into the then King's-bench, to be argued there, and to receive a final and legal determination. And although all the judges of the Court were clearly of opinion it was murder, yet it being in a case of life, they did not think it prudent to give judgment of death upon him, but admitted him to his clergy. Kelyng's Reports, fo. 59, 60, 1, 2.

So very tender were the judges in the case of life, not only well to be advised, but even against their own opinions, and that when they were very clear in it, to give judgment in favour of life, although in a case of murder.*

* All this is from the Former Edition; some references however being corrected. See more on the subject in a Note to the Case of Coke Woodburn, A. D. 1722.

449. Proceedings in Parliament against JAMES Earl of DERWENTWATER, WILLIAM Lord WIDDRINGTON, WILLIAM Earl of NITHISDALE, ROBERT Earl of CARNWATH, WILLIAM Visc. KENMURE, and WILLIAM Lord NAIRN, upon an Impeachment for High Treason: 2 GEORGE I. A. D. 1716.

THE above-named lords having excited a rebellion, and levied war against his majesty, and being taken prisoners whilst in actual hostilities, the parliament at that time sitting, it was moved in the House of Commons,* January 9, that they should not be left to the ordinary method of prosecutions, but be proceeded against by way of impeachment:

Upon which occasion, Mr. *Lechmere* spake as follows:

After the general assurances this House has given his majesty, one moment ought not to be lost without taking some effectual step towards making them good. The first and great concern is to put an end to this rebellion, not only to quiet the present commotions, but to extinguish the very possibility of their being renewed: for these ends every gentleman will agree to strengthen the hands of the king, in such manner as will enable him speedily and effectually to complete this work: you will do this with absolute cheerfulness, from the certain knowledge and experience we have had of the wisdom and justice of his majesty, who will make no other use of any confidence his parliament shall repose in him, than to promote the common welfare of his people; and whatever extraordinary assistance the present juncture of affairs shall require, will be continued no longer than the public necessity calls for. The next useful and necessary step is the national justice, which is incumbent on this House, in duty to the king, as well as in justice to the people; and as ungrateful and disagreeable a part as this must be, yet when the design of the enemy is become so desperate and so avowed, as to strike at the crown upon the king's head, and to involve the nation in the calamities of a civil war, the House cannot exert themselves too early, nor with too much vigour; and as the House shall acquit themselves on this occasion, I dare promise myself the effect will be answerable. The spirit which shall be shewn in this instance, will animate the friends of the government both at home and abroad; and the terror it must strike on our enemies, will be equal at least, and contribute as much to the common safety, as any other preparation that has or can be made. I wish I could say or think that this rebellion is the project of those only who appeared to head it; or that it is the result of the weak or rash counsels of those who publicly avow it; I wish I could say, that it is the work of Papists only, or of those few Protestants who are wicked or weak enough openly to join in it. I wish I could say, that it was a plot but of yesterday, and that it has taken no deeper root than ordinary appearance will lead to suspect: but I think it plain, that it is the effect of many years labour, of the joint and united labour of great numbers, both Protestants and Papists, the plain and necessary consequence of the measures which have been carrying on for some years past: to frame a right judgment of the nature of this rebellion, I think it necessary for us to look back and consider the natural tendency of the public proceedings of late years, and the connection they bear with the present unfortunate state of things; when men in sacred functions suffered themselves to become state instruments, and the great merit of such men was under the pretence of asserting the doctrines of the Church of England, to condemn the Revolution, I could never understand any other design or tendency from those practices, than to undermine the foundation of the Protestant Succession. I remember it was said upon a very solemn occasion, by a very honourable gentleman, "That the condemning the late happy Revolution,

* "It does not appear that the Commons had before them any papers, or evidence of the facts; or any other ground for their proceeding than common fame." 4 Hatsell, 238.

could have no other meaning than to make way for another." However wicked and dangerous these practices were, they made too great an impression, and contributed a great deal to the present calamity; for as the designs of the enemy grew more avowed, state principles of another kind were advanced, which still conduced to the same end. It was well known what industry was used to inculcate the notions of hereditary right to the crown, in opposition to the settlement which had been made of it in the House of Hanover by the authority of parliament, and with no other view than to weaken that settlement: every one remembers what extraordinary pains were taken to poison the people with this dangerous notion; and that those who made the best court to men in power, were such who espoused this opinion in the most notorious manner. I cannot forget with what tenderness a certain divine* of the Church of England was treated below stairs, whilst under prosecution for the most impudent libel † that ever was published against any government, that had either will or power to maintain itself. I think the punishment that was inflicted on that gentleman light enough, but I cannot avoid taking notice of a remarkable passage which then alarmed every thinking man, and will, one time or other, deserve the consideration of this House, viz. The order from the government, countersigned by a secretary of state to the judges of the Queen's-bench, after the judgment passed, to supersede the ignominious part of the punishment, by reason of the sacred function of the criminal: by which the most unexampled and dangerous distinction was introduced; and which proceeding could bear no other construction, than as a licence and protection, even from the government to men in holy orders, to propagate that destructive position with impunity; and the character of the person, which ought in justice to have aggravated his guilt and heightened the punishment, became his indemnity against the reproach of it, even by the authority of the government itself. I remember very well in what manner every thing of that nature was treated in Westminster-hall; what severities were exercised against those persons who had courage enough to assert the interest of their country, and of the Protestant Succession, at the same time that the patrons of hereditary right enjoyed all indulgences. I mention these things on no uncertainties, having been an eye-witness of them myself, and it having fallen to my share to bear some part in them: this was one of the most successful parts of the scheme of those who had fixed their eyes on the Pretender: the House need not be told how far it has operated, to the prejudice of the Protestant Succession. I could give many other instances of this kind, all which promoted the same end: the gross distinctions that were coined to elude the oaths that had been made for the security of the government: the endeavours that were used to possess the people with false fears of the danger of the Church; and the little care that was taken, to say no worse of it, to instil into the youth of the kingdom, such principles as were consistent with the true interest either of Church or State. I look upon these things to be the foundation of the scheme that is now, by this rebellion, carrying on into execution; and I own that in this respect the authors of it were wise in their generation, for by these arts the very principle on which the Protestant Succession is founded was shaken; and though the methods of doing it were base and vile, yet the dissatisfaction and uneasiness that was created by them in the minds of the people, made way for the change that was desired. I must crave leave to put you in mind of other parts of this scheme that were carrying on at the same time. The enemies to the present government judging aright for their own purpose, by all methods to attack the consciences of the people, as to the legality and justice of the settlement of the crown in the House of Hanover, thought it necessary at the same time to disable, as far as they could, those persons who had been most remarkable for their services in the support of it: the great effort was made at that great man,* who is not only the honour and ornament of his country, but the glory of the age he lives in. I think I shall not be suspected of flattery at this time, nor, I believe, at any time, with respect to that great man. Many who now hear me, remember the part I took in vindication of that great man, whilst his character was under debate in this House. I cannot forget the rage and inveteracy with which he was pursued; nor how much stress was laid upon obtaining the censures of parliament upon him: the aspersions then thrown upon him did not hurt that great man: and whatever endeavours may at any time be used to lessen him, will hurt none but those that shall promote them: but yet those vain endeavours were a very useful part of the scheme then carrying on. It was a necessary step for those men to put him out of the way, whose very name and appearance, at that time, would have been sufficient to raise armies in favour of the Protestant Succession and the liberties of his country: But I cannot but observe, that as serviceable as it was for the measures of those men to wound his character, it is now a reproach

* Mr. Bedford.—*Former Edition.*

"I am informed that this book, though usually ascribed to the Rev. Mr. Hilkiah Bedford, was in reality written by Mr. Harbin; and the preface by the Rev. Mr. Theophilus Downs. I am also referred to Tillotson's Life, by Dr. Birch, 2nd edit. with regard to these particulars." Barrington's Obs. on 11 Hen. 7, c. 1. See a short memorandum of Bedford's Case, and other particulars concerning him, in a note to the Case of John Matthews, A. D. 1719, *infra*.

† "The Hereditary Right asserted," &c.

* The Duke of Marlborough.

to the kingdom that those groundless aspersions, which have been cast upon him, should remain upon the journals of parliament. Another great lord* fell under the violence of those times, (I mean the lord who was minister in the Low Countries, and was chiefly instrumental in procuring the treaty of Barrier and Succession) whose prosecution was attended with uncommon fury. Myself had some share in justifying that great man in this House, when he was voted an enemy to his country. I observed at that time, and the event has made it evident, that the Barrier was but the pretence, and that the great services he had done to the Protestant Succession was the true provocation which drew that rage upon him. Two other honourable gentlemen† now sitting near me, felt the severity of those times: They had distinguished themselves by their zeal and firmness to the true interest of their country, and were too considerable to escape the malice of those who had other views. Those proceedings, how uncertain soever the design of them might appear while they were transacting, have been sufficiently explained by what has followed. The name of that general‡, for whose immediate service the great man first mentioned was blemished, and for whom there was vanity enough to make him his rival, is now become the reproach of his family and country; he avows the service of the Pretender, and ere long we may hear of him at the head of an expedition for establishing Popery and arbitrary power. The secretary of state§ who distinguished himself in the pursuit of the other great lord, has sufficiently explained his designs to the whole world; and the next tidings that we may expect from abroad is, that he has taken upon him the character of a minister to the Pretender. I look upon this (namely the disabling the great assertors of the Protestant interest) to be a second, and no small part of the scheme: and while these things were carrying on, their little engines and tools were carrying on their work below-stairs.‖ Every man who favoured the Hanoverian succession was to be worried, and all open and scandalous assertors of contrary principles were treated with all the care and tenderness of friends. Charters of corporations were attacked in a more unprecedented and dangerous manner than in any former times, when practices of that kind were most justly complained of; and no stone was left unturned, to strengthen themselves in that respect. I will not now trouble you any more upon that head, having some thoughts ere long to present you with a small collection of things of that kind for your serious consideration. The master strokes of this grand scheme are yet behind: The surest way to destroy the government has been always thought to be by its own hands; that is, by the authority and power of parliament. For this purpose, a confederacy, by which the liberties of Europe had been so long sustained against the power of France, was broke to pieces, by votes that were obtained in this House, in the most extraordinary manner. The honour of the nation, the balance of power, and the Protestant interest in Europe, were effectually given up in the negociations and conclusion of the peace, by which France was restored to its ancient and formidable state: And every body remembers how near we were by the same influences, to have given up the whole trade of the nation to the interest of the French king, who after that had no suitable return left for him to make for such service, but to bestow upon us a Pretender bred up in his own faith, and in his own politics. Nothing could have obstructed this, but the many miraculous providences that immediately followed, when his power throughout Europe was uncontestable; and, by the measures that had been taken, the Protestant Succession had scarce a friend left in the world. The king's accession to the throne, accompanied by so many providential circumstances, as it disappointed the immediate execution of the scheme, so it quieted the spirit of those men for some time. If we could make a right judgment of the present rebellion, we must compare the steps that immediately preceded, with those which were taken in the last reign, when the hope was to have brought about the same end without a stroke. The same endeavours soon appeared to propagate the same principles both in Church and State: And those endeavours, though at first not so open, were yet as restless to create dissatisfaction against his majesty's government, as they had been before to prevent its taking place. As the encouragement grew stronger, tumults and riots were universally fomented; and it is well known from what quarter they rose, and against whom they were levelled: But yet no one instance has been assigned throughout his administration, that could offend or provoke any but a Jacobite spirit. His majesty has done more for the honour of the church, and the true interest of his kingdom, than any of his predecessors in three times the number of years. His personal virtues, and the wisdom and steadiness of his government, have retrieved the honour and reputation of his kingdoms, which had been so shamefully lost: His weight and influence abroad, and the credit he has obtained in all the known parts of the world, has already procured the settlement of the matters in difference between the two chief powers of Europe, from whom alone we can expect assistance in times of danger. No single instance can be assigned of hardship or oppression to any one of his subjects, or that can give a just reason of dissatisfaction; but on the contrary, those who have shewn the greatest aversion to his government, have received the kindest invitations, and enjoyed the highest indulgences from him. If any errors may have

* The Lord Viscount Townshend.
† Mr. Stanhope and Mr. Walpole.
‡ The late Duke of Ormond.
§ The late Lord Viscount Bolingbroke.
‖ Westminster-hall.

been committed in any parts of the administration during the present disorders, every honest man ought to judge of them by this one rule, that is, the plain design for which all measures are calculated, which every body must admit to be, the preservation of the Protestant Succession: All incidents of such an administration ought to be covered or justified by the interest that shall appear to be carrying on throughout the whole; by the same rule of justice, when the destruction of the common interest was the plain intention of the late administration, the greatest weight ought to be laid on every little circumstance that attended, in order to obtain a public satisfaction: By taking in all these considerations, I think we shall make a full and right judgment of the nature of this rebellion; from whence it took its rise; how deep it has taken root; to what influences it is owing, and how far it extends. The part the lord Derwentwater, and others, have taken in it, are to be considered as the first symptoms of that general disorder, for which so much foundation was laid; for which reason I think, that we cannot consider this otherwise than as the cause of the nation, in the strongest manner. In justice to the king, as well as to the people, we ought to take this into our own hands, and not to entrust the prosecution of it with any body but ourselves. Every body knows to what hazards prosecutions in the ordinary course of justice are liable, though they are never so well concerted by those, whose business it is to carry them on; but how sure soever the success may be, in a case so notorious as this, yet it is obvious to every body, of what different weight and influence the prosecutions of parliament are from these in the ordinary forms. I own I am surprized, that any measures have been taken of that kind, against the peers who have been taken in open rebellion, during the sitting of a parliament which has shewn so much zeal, and has contributed so much to the preservation of the government, especially at a time when the crown on the king's head is fighting for. I very well know, that though the House of Commons' right of impeaching criminals is unlimited, yet they will exercise that power by the rules of wisdom and discretion, and not engage in trivial matters, but in such only where the offenders are not within the reach of the ordinary justice; or the nature of their crimes such, as are not fit to be meddled with by the ordinary jurisdictions: The case of the lords taken in rebellion is indeed notorious, and of which the proof will be easy, but though not from the difficulty of the prosecution, yet from the weight and consequences of it, I think I need say little more to convince you, and make it our prosecution, by which we engage every commoner in Great-Britain as an immediate party against those who have carried a war into the bowels of the kingdom. No instance ever has risen in the English history, where our ancestors have permitted a prosecution against the chief actors, to be carried any where but in full parliament. The five Popish lords were pursued by the loud voice and weight of the Commons of England: And though at that time the nation was in peace, they would not permit the fate of those prosecutions to depend on the care or skill of those who are versed in the ordinary forms of justice, and their success was answerable. I own my desire upon all occasions to raise the honour and authority of parliaments, which I think the greatest support of the honour and the prerogatives of the crown. For which reason, I take this occasion to speak more fully to the nature of impeachments, and the rather, because I apprehend some gentlemen have mistaken notions concerning them. The power of impeachments is the most valuable and useful privilege that belongs to the body of the Commons, at least, equal to that of giving money, which belongs solely to them. Gentlemen need not be apprehensive of any intricacies in those proceedings, especially at a time and upon an occasion, when there is no doubt of the concurrence of both Houses. Impeachments are in themselves more plain, regular, and disintangled, than any other forms of justice: They are particularly excepted out of the late statute of treasons, which has very much fettered the ordinary course of proceedings. Impeachments were never made difficult, but when they were carried on against the inclination of the crown, or at a time when there was no good understanding between the two Houses; when little occasions might be sought to raise disputes, and interrupt them; or else when they are undertaken before they are well considered, which cannot be the present case. There is another reason, which upon this occasion should determine gentlemen into this method; I mean the consequence of the judgment that shall be obtained against these lords: it is my clear opinion, and what I think I can maintain, that no pardon under the great seal can discharge a judgment obtained upon the impeachment of the Commons: this opinion has been strenuously asserted in this House in former reigns; and I think it not weakened by the declaration in the Act of Settlement of the crown upon the House of Hanover. I have heard of a very low distinction that has been coined without doors to avoid this opinion, viz. That the pardon is not pleadable in bar of the impeachment to prevent the Commons from examining into the offence; but that it is pleadable after judgment, and in bar of execution.* Whenever that question

* The king's power of pardoning an impeached person in bar of execution was exercised in favour of three of the Lords thus proceeded against, viz. Lord Widdrington, lord Carnwath, and lord Nairn. With respect to the king's power of pardon in cases of impeachment, see the Case of lord Danby, vol. 11, p. 599. In the Note to that Case, p. 737, the reference to vol. 7, p. 324, should have been vol. 7, p. 1524. It appears by the Lords'

shall come properly before you, I will undertake to shew the idleness and absurdity of that distinction: if that distinction be framed to make court to the prerogative, I think it the most false and destructive piece of flattery of the kind that ever has been raised. It is the greatest ease, security, and support of the crown, in my opinion, instead of any diminution of it, that no such power shall be lodged there, to be exercised on any occasion, to prevent the possibility of the crown's being wrought upon by any influences to defeat the judgment given in full parliament, with the concurrence of both Houses, against the highest offenders, which must inevitably create the greatest jealousy, and cause the highest dissatisfactions between the crown and the people: for this reason, I take it to be the greatest advantage to the crown, that the constitution of the kingdom has not, as I think, invested it with any such power: and on the other side, it will clearly appear, that such a power is utterly inconsistent with the fundamental rights of parliament. I own I am surprized to hear, that any such distinction should be started at this time: but if the law be, as I apprehend it is, it is the strongest reason for the Commons to interpose in this prosecution to defend the crown from the many importunities to which it will be subject, in the ordinary course of justice: the weight of this prosecution, and the consequences of it, will be borne by the Commons, as it ought to be in a case so national as this. If gentlemen want any other motives, to induce them to make this prosecution their own, I have a paper in my hand which will fire the thoughts of every gentleman here, it is the Pretender's Declaration, which nobody can read without the utmost indignation; considering the personal indignities which are therein cast upon the best of princes, whose title to the crown we are bound by all the ties of duty, affection, and interest to maintain. We can do no less than resent this so far, as to make ourselves the prosecutors of those who avow this cause of the Pretender, and set themselves at the head of armies, in the heart of the king's dominions. In this paper we shall see how we are treated ourselves: "We are represented as the most illegal and infamous assembly of men that ever met together." These considerations ought, in justice, to animate and invigorate our proceedings in every respect, till the "inveteracy and insolence of the enemy are entirely subdued:" I do not think that the proceedings of this House ought in any case to be governed by vindictive considerations, but by such circumstances only as from their real weight and consequence call for the interposition of the Commons. I am sensible that the Commons have a great work upon their hands, from other Impeachments, which they have thought fit to enter upon, and which are still depending; I know also what situation these Impeachments are in; and hope they will be resumed and carried on, in due season, with the same vigour with which they were undertaken. I likewise believe, that the nation expects, that our enquiries upon this head shall be extended and appear to be impartial, it not being possible, that a greater dishonour can be brought, or an heavier imputation cast upon our proceedings, than that of partiality, which cannot fail to sink our credit, and to prevent all the good effects that are hoped and expected from them: however, every gentleman will agree with me, that the present situation and conjuncture of affairs make it necessary to give the preference to those lords who have been taken in open rebellion. And therefore I now impeach James earl of Derwentwater of high-treason; which Impeachment I undertake to make good.

The consequence of this Speech was, that the House came to a resolution to impeach James earl of Derwentwater of high-treason. Upon the like motions they resolved the same with regard to William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, William lord Nairn; accordingly they were impeached at the bar of the House of Lords, and the same night the Articles of Impeachment were carried up to the Lords;* and the next day the impeached lords were brought to the bar of the House, and charged with the said Articles, and ordered to put in their Answer by the 16th, and that not only counsel, but any other persons, whom they should name, should have liberty to assist them. They had afterwards leave till the 19th to put in their Answers, when they severally pleaded Guilty (except the earl of Wintoun, who had further time allowed him) and the 9th of Feb. was appointed to pass sentence on them.

On Thursday Feb. the 9th, about one of the clock, the Lords came from their own House into the Court erected in Westminster-hall, to pass sentence upon James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, Robert earl of Carnwath, William

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Journal, November 23, 1689, that on that day it was proposed to add to the 'Act declaring the Rights and Liberties of the Subject and settling the Succession of the Crown' [the first Act of Settlement] a Rider; which however was rejected by a majority of 50 against 17. Upon which occasion was entered a Protest. See 14 Lords' Journals, 351.

Mr. Seward, in the second volume of his Anecdotes, relates that the life of one of the Scots Noblemen condemned after the rebellion of 1715, was saved by the zealous and resolute intercession of General (afterwards the first earl) Stanhope. The anecdote brings to mind that which is related in the 313th Number of the Spectator.

* See 4 Hatsell, 244, 250, 270, *et seq.* See too, p. 291, of the same volume.

viscount Kenmure, and William lord Nairn, in the manner following.*

* Mr. Gregory King, Lancaster Herald, having wrote the Method of Proceedings upon the Trial of a Peer, we thought it not improper to give it a place here, no such account being published in the State Trials.—*For. Edit.*

Upon the Trial of a PEER.

There is to be a commission under the great seal, constituting a lord high steward for that occasion.

If the great seal be then in commission, a speaker of the House of Peers is to be appointed by special commission.

The king's writ of Certiorari is to be directed to the commissioners of Oyer and Terminer, for Middlesex, to remove the indictment found before them against the prisoner.

The return whereof, with the record of the indictment, is to mention the time of the inquest of the grand jury, and when the fact was committed.

A precept is to be directed to the chief governor of the Tower, to bring his prisoner to the Court.

If the Trial be by special commission, a sheriff is to be appointed to summon the lords the triers, and to do other services, who is to have a white wand.

The lord chamberlain of the household (or, in his absence, the vice-chamberlain,) is to know when his majesty will be attended for receiving the lord high steward's staff, and delivering it to the officers, who are to present it to the high steward; and is to give notice thereof to Garter king of arms, and to the usher of the Black Rod.

Upon this notice, the Black Rod is to provide a white staff, eight or nine feet long, and he and Garter are to attend with it at the king's bedchamber, or where his majesty appoints, and to deliver it to the lord chamberlain, who is to present it to the king on his knee; and Garter, and the Black Rod in the bedchamber, or at the place appointed, are to receive it jointly from the king, on their knee, with his majesty's directions to whom it is to be delivered.

Hereupon, Garter and Black Rod are to wait upon the lord high steward, and to give him an account thereof, and to know when he will please to be attended to the Trial.

On the morning of the Trial, at the hour appointed by the lord high steward, the judges in their scarlet robes, (unless in time of mourning) together with Garter, and the Black Rod, and the serjeant at arms, who is to make the proclamations, are to assemble at the lord high steward's house, and are to wait on him above stairs, or where he pleases to receive them, Garter being in his coat of arms, the Black Rod having the white staff, and the serjeant at arms bearing his mace, where they all have a collation.

The lord high steward is to be called 'his grace' upon this occasion, during the Trial.

The lord high-steward's gentlemen attendants, two and two.

After a short stay, his grace the lord high steward comes down to his coach thus:

His grace's gentlemen, two and two, bare-headed.

His serjeant at arms, and seal bearer, (if the lord high steward be lord chancellor, or lord keeper), both bare-headed, one with the mace, the other with the purse.

The Black Rod with the lord high steward's staff, and Garter king of arms on his right hand, both bare-headed.

Then his grace the lord high steward, in his usual habit (unless he be lord chancellor or lord keeper, and then in his rich gown, his train borne), followed by the chief justices and judges.

His grace's gentlemen, to the number of eight, twelve, or sixteen, as his grace pleases, first take their coaches without the gate, four in a coach, each coach having two horses only.

Then the lord high steward takes his coach with six horses, within the court, at the foot of the stairs, seating himself on the hinder seat of the coach singly; Garter (and the seal bearer), sitting over-against his grace bare-headed, the Black Rod in the right hand boot of the coach, with his grace's white staff, and his grace's serjeant at arms in the left boot, with his mace.

The judges take their coaches without the gate, and follow his grace.

When the Trial is by special commission, a messenger is to be sent a little before, to acquaint the lords the triers, (who are to assemble in, or near the House of Peers, or in the Exchequer Chamber) that his grace is coming, in order to their taking their seats in the court beforehand, and then his grace goes directly to Westminster-hall, by the way of the New Palace-yard.

But if the Trial be in parliament, they pass to the Old Palace-yard, and so up the stairs, towards the House of Peers, in this order.

First, his grace's gentlemen, two and two.

Then eight serjeants at arms, two and two: these are to wait his grace's arrival at the bottom of the stairs.

Then his grace's serjeant and seal bearer.

Then the Black Rod and Garter.

Then the lord high steward, followed by the chief justices and judges.

Passing through the Painted Chamber, at the upper end thereof, the lord high steward's gentlemen make a lane for his grace, and the rest of the proceeding to pass through. The serjeants at arms (all but his grace's serjeant) stay in the lobby between the Painted Chamber and House of Lords, and beyond them Garter on the right hand, and the Black Rod with the white staff on the left.

The peers are to be in their robes, and his grace coming into the House, (and the mace being deposited on the uppermost woolsack), passes on to my lord chancellor's room, or the

The clerks assistant to the House of Lords, and the clerk of the parliament, with the clerk of the crown in the court of Chancery; the clerk of the parliament bearing the king's commission to the lord high-steward.

The masters in Chancery, two and two.

Then the judges.

The peers eldest sons, and peers minors, two and two.

Four serjeants at arms with their maces, two and two.

The yeomen ushers of the House.

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his grace's chamber; where, if the high steward be not lord chancellor, or lord keeper, his grace puts on his parliament robes.

Having reposed a while, his grace comes into the House again, and prayers begin, after which, if the lord high steward have a special commission to be speaker, it is to be read, and he is to take the woolsack.

Then the peers are to be called over by one of the clerks assistant, and notice to be taken of all that are present; and then the House adjourning to Westminster-hall, Garter, by his grace's command, summons forth the peers present, one of the clerks assistant having marked a list of them, for Garter to call them over by. And the proceeding to Westminster-hall is in this manner:

His grace the lord high steward's gentlemen attendants, two and two.

The clerks assistant to the House of Lords, and clerk of the parliament.

Two clerks of the crown in the King's-bench, and Chancery, if there.

The masters in chancery.

The attorney general, if there.

The judges, and chief justices.

Peers eldest sons, and peers minors.

Four serjeants at arms, with their maces, two and two.

The yeoman usher of the House of Peers.

The Lords spiritual and temporal, according to their degrees and precedencies, two and two. The youngest barons first, all covered.

Four serjeants at arms more, with their maces, two and two.

His grace's serjeant at arms, and seal bearer.

The Black Rod, with his grace's white staff, and Garter king of arms, in his coat of arms, on the right.

The lord high steward of England alone, covered.

His royal highness the prince of Wales, if present.

Thus they pass through the Painted Chamber, Court of Requests, and part of the Court of Wards, through a door between the Court of Chancery and King's-bench, into the Court in Westminster-hall, where the peers go to their seats as in the House of Lords.

The lord steward's gentlemen go to the further side of the throne, on the left hand.

The noblemen's eldest sons, and peers minors, stand on the right side the lord high steward's chair.

The clerk of the parliament, and clerks assistant, go to their table.

The Black Rod and Garter come before the throne, make their obeisance, and stand by, whilst the lord high steward does the like; whence his grace, attended by all the serjeants at arms, and the Black Rod and Garter having saluted the peers, repairs to the woolsack, and his grace's serjeant at arms goes to the end of the clerk's table.

His Grace taking his place on the woolsack, as speaker of the House of Peers, the lords being seated on their benches, and the judges and masters in Chancery below on their seats, Garter and the seal bearer stand on his grace's right hand, and the Black Rod on the left, and the eight serjeants at arms stand on each side more behind.

The two clerks of the crown are to be ready at the clerk's table, and to stand before it; and the clerk of the crown in Chancery, having the king's commission to his grace in his hand, they both make three reverences to his grace, and at the third reverence coming up before the woolsack, they both kneel down, and the clerk of the crown in Chancery, on his knee, presents the commission to his grace, who delivers it to the clerk of the crown of the King's-bench, and they with three reverences returning to the clerk's table, the clerk of the crown in the King's-bench, directs his grace's serjeant at arms (after thrice crying, O Yes) to make proclamation of silence, which he is to do with his mace on his shoulder; the said clerk of the crown of the King's-bench, dictating the proclamation to the serjeant, and then opening the commission, reads it.

His grace, and the lords, stand up uncovered, whilst the commission is reading, which his grace is to mind the lords that they do.

The commission being read, and his grace bowing, and sitting down again, Garter, and the Black Rod, with three reverences jointly, present the white staff on their knees to his grace; and thereupon being fully invested in his office, his grace, with the white staff in his hand, removes from the woolsack to his chair, placed for him on an ascent before the uppermost step of the throne, or state, attended by Garter, the Black Rod, and the serjeants at arms, and there sits down, the seal bearer laying the purse on a stool on the left.

Then proclamation is to be made for all persons but the peers to be uncovered.

Then the king's writ of Certiorari to remove the indictment, with the return thereof, and the record of the indictment, is to be read by the clerk of the crown in the King's-bench.

Then the said clerk of the crown directs the serjeant at arms to make proclamation for the chief governor of the Tower of London to return the precept to him directed, with the body of the prisoner, into court.

Whereupon the governor, or deputy-governor, brings the prisoner to the bar, the axe being carried before him by the gentleman-

Then the Peers, two and two, beginning with the youngest barons.

Then four serjeants at arms with their maces.

The serjeant at arms attending the great-seal, and purse-bearer.

Then Garter king at arms; and the gentleman-usher of the Black Rod, carrying the white staff before the lord high-steward.

The lord high-steward (William lord Cowper) alone, his train borne.

When the Lords were placed in their proper seats, and the lord high-steward upon the wool-pack,

The clerk of the crown, in the court of Chancery, standing before the clerk's table, with his face towards the state, having his

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jailor of the Tower, who is to stand with it at the bar, on the right hand of the prisoner, turning the edge from him.

The prisoner, at his approach to the bar, is to make three reverences, one to his grace the lord high steward, the other two to the peers on each hand, and his grace and all the peers are to return the salute to him. And the Black Rod is to mind the prisoner that he kneel, till his grace bids him arise, in case the prisoner do it not of himself.

His grace, the lord high steward (that he may the better hear, and be heard) may, with leave of the peers, come down upon the wool-sack, and may deliver his white staff to the Black Rod, who is to hold it by him upright. And then the serjeants at arms may unshoulder their maces.

Then his grace may give such directions to the prisoner, and to the counsel at the bar, as he thinks convenient, touching the Trial; and then may address himself more particularly to the prisoner, touching the crime for which he stands indicted.

After which, the clerk of the crown, by his grace's command, is to read the indictment, to which the prisoner is to plead, and (if he plead Not Guilty) is to put himself on his trial by God and his Peers.

Then the judges, with consent of the peers, at the motion of his grace the lord high steward, may put on their caps.

And proclamation being made for the king's evidence to come forth, the king's counsel, by his grace's direction, are to begin to open the indictment, and to proceed to the Trial.

If any question arise during the Trial, that the lords are minded to debate in their own House, the Court is to be adjourned by his grace the lord high steward to the House of Peers; and the manner of going thither, and returning again to the Court, is to be much in the same order as at the first coming in to the Court; his grace carrying his white staff to the door of the House of Lords, and there delivering it to the Black Rod to hold, till the Court return.

Upon any intervals during the Trial, the lord high steward may have wine and biscuits presented him on the knee; and the judges and officers attending, may also have wine and biscuits.

If the Trial last more days than one, the bishops are at their election whether they will be present after the first day.

Every day during the Trial, the lord high steward is to be attended to his house by Garter and the Black Rod; &c. as he came at first; save that the judges do not attend his grace home: and that if his grace have four coaches of attendants, two of them go before him, and two of them after him. And Garter, the Black Rod, and serjeant, every evening during the Trial (after the Black Rod has delivered the white staff to his grace, at the alighting out of his coach) attend his grace up stairs, his grace entertaining them at his own table at supper, each day of the Trial.

But every morning during the Trial (if it last more than one day), the judges, with Garter, the seal bearer, the Black Rod, and serjeant, attend his grace at his house, and thence to the House of Lords, (to which place the Court is always adjourned every night) as on the first day, the Black Rod delivering the staff to his grace at the foot of the steps going up to the House of Lords, and receiving it again from his grace at the door of the House of Lords.

The Trial being over (which sometimes lasts four or five days), the prisoner being withdrawn, his grace the lord high steward is to put the question, Whether the prisoner is Guilty of the crime whereof he stands indicted, or Not Guilty? Asking the lords severally, beginning with the youngest baron, and writing down their answers; and lastly delivering his own opinion. Every peer upon pronouncing his judgment, standing up uncovered, and laying his right hand on his breast and saying, Guilty (or Not Guilty) upon my honour.

Then his grace is to declare to the peers how many have pronounced the prisoner Guilty, and how many Not Guilty.

After which, the prisoner being again brought to the bar, and proclamation made for silence, his grace declares to the prisoner the judgment of the Peers, and then commands proclamation for dissolving the commission.

The proclamation ended, his grace stands up, and having received the white staff from Garter and the Black Rod jointly, (as his grace always does, when he receives in Court) his grace holding the white staff in both his hands, breaks it in two, and so dissolves the commission.

Then the lord chancellor, or speaker, demands the pleasure of the peers, whether they will then adjourn to the House of Lords; and if so, then they return thither in the former order (except as to the white staff.) But if they do not adjourn thither at that time, Garter, and the Black Rod, attend the lord high steward to his coach, and so to his house, and then the seal bearer and Black Rod change places. *Former Edition.*

majesty's commission to the lord high-steward in his hand, made three reverences towards the lord high-steward; and on his knee, presented the commission to the lord high-steward; after which, and usual reverences, the same was carried down to the table: and then proclamation for silence was made in this manner:

O Yes, O Yes, O Yes! Our sovereign lord the king strictly charges and commands all manner of persons to keep silence, upon pain of imprisonment.

Then the lord high-steward stood up, and spoke to the Peers.

Lord High Steward. His majesty's commission is going to be read; your lordships are desired to attend.

All the Peers uncovered themselves, and they and all others stood up uncovered while the commission was reading.

"GEORGIUS *R.*

"Georgius, Dei Gratia, Magnæ Britanniæ, Franciæ et Hiberniæ Rex, Fidei Defensor, &c. Prædilecto et Fideli Consiliario nostro Willelmo Domino Cowper, Cancellario nostro Magnæ Britanniæ, Salutem. Cum Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithisdale, Georgius Comes de Winton, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, et Willielmus Dominus Nairn, coram Nobis in præsenti Parliamento, per Milites, Cives et Burgenses in Parliamento nostro Assemblat' de alta Proditione per ipsos Jacobum Comitem de Derwentwater, Willielmum Dominum Widdrington, Willielmum Comitem de Nithisdale, Georgium Comitem de Winton, Robertum Comitem de Carnwath, Willielmum Vicecomitem Kenmure, et Willielmum Dominum Nairn, commiss' et perpetrat' in nomine ipsorum Militum, Civium et Burgensium, et nomine omnium Communium Regni nostri Magnæ Britanniæ impetiti et accusati existunt; et ipsi prædict' Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithisdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, et Willielmus Dominus Nairn, coram Nobis in præsenti Parliamento de Proditione prædict' se esse culpabiles seperatim cognoverunt: Nos considerantes quod Justitia est Virtus excellens et altissimo complacens, Volentesque quod prædict' Jacobus Comes de Derwentwater, Willielmus Dominus Widdrington, Willielmus Comes de Nithisdale, Robertus Comes de Carnwath, Willielmus Vicecomes Kenmure, et Willielmus Dominus Nairn, de et pro Proditione unde ipsi ut præfertur impetit' accusat' et convict' existunt coram nobis in præsenti Parliamento nostro, secundum Legem et Consuetudinem hujus Regni nostri Magnæ Britanniæ, et secundum Consuetudinem Parliamenti audiantur, sentientur et adjudicentur, cæteraque omnia quæ in hac parte pertinent debito modo exerceantur et exequantur, ac pro eo quod Proceres et Magnates in præsenti Parliamento nostro assemblat' Nobis humillime supplicaverunt ut Senescallum Magnæ Britanniæ pro hac vice constituere dignaremur. Nos de fidelitate, prudentia, provida circumspectione, et industria vestris plurimum confidentes, Ordinavimus et Constituimus vos ex hac Causa Senescallum Magnæ Britanniæ ad Officium illud, cum omnibus eidem Officio in hac parte debit' et pertinen' (hac vice) gerend' occupand' et exercend'. Et ideo vobis Mandamus quod circa præmissa diligenter intendatis, et omnia quæ in hac parte ad Officium Senescalli Magnæ Britanniæ pertin' et requiruntur hac vice faciatis, exerceatis, et exequamini cum effectu. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes, Teste me ipso apud Westm' Nono Die Februarii, Anno Regni nostri Secundo."*

"Per ipsum Regem propria Manu Signat'

"WRIGHTE."

Serjeant at Arms. God save the king.

Then the herald and gentleman usher of the Black-rod, after three reverences, kneeling, presented the white staff to his grace: and then his grace attended by the herald, Black-rod and seal-bearer (making his proper reverences towards the throne) removed from the wool-pack to an armed chair, which was placed on the uppermost step but one of the throne, as it was prepared for that purpose, and then seated himself in the chair, and delivered the staff to the gentleman usher of the Black-rod on his right hand, the seal-bearer holding the purse on the left.

Clerk of the Crown. Serjeant at Arms, make proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes! Our sovereign lord the king strictly charges and commands all manner of persons to keep silence, upon pain of imprisonment.

Then another proclamation was made, as follows.

O Yes, O Yes, O Yes! Lieutenant of the Tower of London, bring forth your prisoners to the bar, according to the order of the House of Lords to you directed.

Then James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, Robert earl of Carnwath, William viscount Kenmure, and William lord Nairn, were all brought to the bar by the deputy-governor of the Tower, having the axe carried before them by the gentleman jailor, who stood with it on the left-hand of the prisoners, with the edge turned from him. The prisoners when they approached the bar (after kneeling) bowed to his grace the lord high steward, and to the House of Peers; which compliment was returned them by his grace, and the House of Peers.

Lord High Steward. Read the Articles of Impeachment.

* See Foster's Report of Earl Ferrers's Case, A. D. 1760.

ARTICLES OF IMPEACHMENTS OF HIGH-TREASON EXHIBITED AGAINST JAMES EARL OF DERWENTWATER, WILLIAM LORD WIDDRINGTON, WILLIAM EARL OF NITHISDALE, GEORGE EARL OF WINTOUN, ROBERT EARL OF CARNWATH, WILLIAM VISCOUNT KENMURE, AND WILLIAM LORD NAIRN.

Whereas for many years last a most wicked design and contrivance has been formed and carried on, to subvert the ancient and established government, and the good laws of these kingdoms, to extirpate the true Protestant religion therein established, and to destroy its professors; and instead thereof to introduce and settle Popery and arbitrary power; in which unnatural and horrid conspiracy great numbers of persons of different degrees and qualities, have concerned themselves and acted; and many Protestants, pretending an uncommon zeal for the Church of England, have joined themselves with professed Papists, uniting their endeavours to accomplish and execute the aforesaid wicked and traitorous designs:

And whereas it pleased Almighty God in his good providence, and in his great mercy and goodness to these nations, to crown the unwearied endeavours of his late majesty king William the 3d, of ever glorious memory, by making him the instrument to procure the settlement of the crown of these realms in the illustrious House of Hanover, as the only means under God to preserve our religion, laws and liberties, and to secure the Protestant interest of Europe; since which happy establishment the said conspirators have been indefatigable in their endeavours to destroy the same, and to make way for the vain and groundless hopes of a spurious impostor and Popish pretender to the imperial crown of these realms.

And to accomplish these ends, the most immoral, irreligious and unchristian-like methods have been taken, but more particularly in the last years of the reign of the late queen Anne, during which time all imaginable endeavours were used by the said conspirators, to prejudice the minds of the subjects of this realm against the legality and justice of the said settlement of the crown: And for that purpose the Holy Scriptures were wrested, and the most wholesome doctrines of the Church of England perverted and abused by men in holy orders,* in the most public and scandalous manner, in order to condemn the justice of the late happy Revolution; and thereby to sap and undermine the foundation of the said happy establishment; and the most notorious instruments of these wicked purposes were countenanced by particular marks of public favour and distinction; false and dangerous notions of a sole hereditary right to the imperial crown of these realms were propagated and encouraged by persons in the highest trust and employments, contrary to the ancient, undoubted and established laws of these kingdoms; jesuitical and scandalous distinctions were invented and publicly inculcated, to enervate the force and obligation of those oaths which had been contrived in the plainest and strongest terms by the wisdom of parliament for the security of the said establishment; and to conceal their designs, and thereby the better to enable them to carry on the same, great numbers of the said conspirators of all ranks and conditions, pretending a zeal for the Protestant Succession, openly and voluntarily took the said oaths; groundless fears of the danger of the Church of England were fomented throughout these kingdoms, to disorder the minds of well-disposed Protestants.

By all which, and many other such ungodly practices of the said conspirators, the most causeless and dangerous jealousies and dissatisfactions were created in the minds of the good people of this kingdom, and great numbers of well-meaning, but deluded Protestants were much disquieted.

But nevertheless, these dishonest methods were pursued by the said conspirators with indefatigable industry, as the only means to weaken the foundations of the said happy establishment.

And whereas the dissolution of the late glorious confederacy against France, and the loss of the balance of power in Europe, were further steps necessary to complete the designs of the said conspirators; and the same being effected by the late ignominious peace with France, the French king was rendered formidable, and the Protestant Succession was thereby brought into the most imminent danger, and by these and other pernicious measures the destruction, so long intended by the said conspirators for these poor nations, seemed near at hand.

At which time, and under which most deplorable circumstances, it pleased Almighty God in his infinite wisdom to call to himself the late queen Anne, and by a concurrence of many most wonderful providences to give a quiet and peaceable accession to his present most gracious majesty to the throne of his ancestors, to which he was received with one full voice and consent of tongue and heart, and the united joy of every good subject and good Protestant, as their only lawful and rightful liege lord; and although from the moment his majesty ascended the throne to this day, his reign has been one series of wisdom, justice and clemency; his labours constant, unwearied and successful to retrieve the honour and reputation of these nations; to re-establish the trade and recover the wealth of his kingdoms; and although all imaginable encouragement has been given to the Church of England, and all tenderness shewn even to his Popish subjects, and his constant care has been to procure the universal good of his people; nevertheless the said

* As to this, see *(int. al.)* the Trial of Sacheverell, in the present volume, p. 1.

conspirators have, by the most vile and impious methods, renewed their endeavours to throw these kingdoms into the utmost confusion, and to entail endless miseries on us and our posterities: For these ends many of the above-mentioned most wicked and dangerous practices have been repeated with the utmost industry and inveteracy, to delude, disorder and corrupt the minds of his majesty's good subjects; the most groundless jealousies have been fomented against his wise and happy administration, and in many parts of his kingdoms the most unnatural, unexampled riots and tumults, by the secret and malicious endeavours of the said conspirators, have been procured, stirred up, and encouraged against his peaceable Protestant subjects, under false pretences of zeal for the Church of England, and thereby more effectually to delude his good subjects and seduce them from their allegiance, and prepare them for an open rebellion.

And the said conspirators having at length resolved to deprive these nations of the invaluable blessings which they now enjoy under the wise and gentle reign of his present most gracious majesty king George, and of the certain prospect of happiness which they have for their posterity, in a succession of princes derived from himself, did contrive, confederate and resolve to put their most malicious, wicked and traitorous designs into immediate execution; for which purpose, James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl Carnwath, William viscount Kenmure, and William lord Nairn, together with Tho. Forster, jun. the lord Charles Murray, Edward Howard, Tho. Errington, John Clavering, William Shaftoe, sir Francis Anderton, Ralph Standish, Richard Townly, Thomas Butler, Thomas Walton, Gabriel Hasket, Richard Gascoigne, and divers other persons, as false traitors to his present most sacred majesty king George, the only lawful and undoubted sovereign of these kingdoms, having withdrawn their allegiance, and cordial love and true and due obedience, which they as good and faithful subjects owed to his said majesty, did, in or about the months of September, October, or November, 1715, most wickedly, maliciously, falsely and traitorously imagine and compass the death of his said most sacred majesty.

And for the accomplishing and executing their said traitorous purpose, they the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, and William lord Nairn, did, in or about the said months, or some of them, and at divers other times, and in divers places within this kingdom, wickedly and traitorously agree, confederate, conspire and resolve, together with many other evil-disposed persons, to raise, excite and levy, within the counties of Tiviotdale, Northumberland, Cumberland and the county palatine of Lancaster, and elsewhere within this kingdom, a most cruel, bloody and destructive war against his majesty, in order to depose and murder his sacred majesty, and to deprive him of his royal state, crown and dignity.

And the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, William lord Nairn, their accomplices and confederates, in or about the months aforesaid, in the counties aforesaid, or some of them, did gather together great numbers of his majesty's subjects, and with them did assemble in a warlike and traitorous manner, in order to raise tumults and rebellion within this kingdom, and having procured great quantities of arms, ammunition and warlike instruments, at the times and places aforesaid, or some of them, did form and compose, or did assist in the forming and composing an army of men, consisting of his majesty's liege subjects, in order to wage war against his said majesty, for and in behalf, and in favour of the said Pretender to the crown of these realms; and the said last mentioned conspirators, their accomplices and confederates, at the time and times and places aforesaid, and at divers other times and places within this kingdom, did maliciously and traitorously make, levy and raise war and rebellion against his most sacred majesty, and in a warlike and hostile manner did march through and invade several parts of this kingdom, and did unlawfully take and seize the horses and other the goods and chattels of many of the peaceable and good subjects of his majesty, and in other places did take and seize, from his majesty's faithful subjects, guns, and other warlike instruments, for the carrying on their traitorous purposes.

And the said last mentioned conspirators, their complices and confederates, during their march and invasion aforesaid, in open defiance of his most sacred majesty's just and undoubted title to the imperial crown of these realms, did wickedly and traitorously cause and procure the said Pretender to be proclaimed, in the most public and solemn manner, as king of these realms; and in several places in the counties aforesaid, or some of them, did unlawfully take and seize from his majesty's officers of the revenue the public money, for the use and service of the said Pretender; and though many of the conspirators are avowed professors of the Popish religion, yet the more effectually to cover and disguise their most wicked and traitorous designs, and to delude his majesty's subjects, they did prevail on and procure several men in holy orders, ministers of the Church of England, and who had before that time abjured the said Pretender, to accompany, countenance and abet the said most traitorous enterprize, and in several places in the counties aforesaid, where the said conspirators, their complices and confederates then were, to pray for the said Pretender in the public churches, as king of these realms.

That the said last mentioned conspirators, their accomplices and confederates, did, on or

about the 9th, 10th, 11th, 12th or 13th of November aforesaid, traiterously seize and possess themselves of the town of Preston in the county palatine of Lancaster against his majesty, and did then and there in a warlike and hostile manner levy war, oppose, engage and fight against his majesty's forces; and did then and there cause and procure a miserable and horrid slaughter and murder of many of his majesty's faithful subjects.*

All which treasons and crimes above-mentioned were contrived, committed, perpetrated, acted and done, by the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Winton, Robert earl of Carnwath, William viscount Kenmure, William lord Nairn, and other the conspirators aforesaid, against our sovereign lord the king, his crown and dignity; and contrary to the duty of their allegiance, and against the laws and statutes of this kingdom.

Of all which treasons and crimes, the knights, citizens and burgesses in parliament assembled, do, in the name of themselves and of all the Commons of Great Britain, impeach the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Winton, Robert earl of Carnwath, William viscount Kenmure, William lord Nairn, and every of them.

And the said Commons by protestation, saving to themselves the liberty of exhibiting at any time hereafter any other accusations or impeachments against the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Winton, Robert earl of Carnwath, William viscount Kenmure, and William lord Nairn, or any of them; and also of replying to the Answers which the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, and William lord Nairn, or any of them, shall make to the premisses, or any of them, or to any impeachment or accusation that shall be by them exhibited according to the course and proceedings of parliament, do pray, that the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, and William lord Nairn, be put to answer all and every the premisses: and that such proceedings, examinations, trials and judgments may be upon them and every of them had and used, as shall be agreeable to law and justice.

Lord High Steward. Clerk of the parliament, read the record of the Answers and Pleas of the lords the prisoners at the bar to the Impeachments.

Thursday, January 19, 1716.

The order of the day being read, for bringing James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, and William lord Nairn, to this House, in order to their putting in their several Answers to the Articles of Impeachment of high treason exhibited against them by the House of Commons.

The said earl of Derwentwater was brought to the bar by the gentleman usher of the black rod, where he kneeled until the Lord Chancellor directed him to rise; and his lordship acquainted him with the above-mentioned order, and demanded of him if he was ready to put in his Answer, which he said he was, and delivered the same at the bar.

Which Answer of the said earl of Derwentwater was read, and is as follows:

THE ANSWER OF JAMES EARL OF DERWENTWATER, TO THE ARTICLES OF IMPEACHMENT OF HIGH TREASON EXHIBITED AGAINST HIM BY THE HON. THE KNIGHTS, CITIZENS, AND BURGESSES OF GREAT BRITAIN IN PARLIAMENT ASSEMBLED.

To a Charge of so high and heinous a nature the said Earl cannot answer without the deepest concern and affliction, which becomes more weighty from the share the honourable House of Commons have been pleased to take in the accusation: He assures himself, however, that great assembly doth not engage in the prosecution of an offence, so open to conviction in the ordinary course of law, with design to intercept that mercy which the Earl, from the report of his majesty's natural goodness, had reason to expect. It would be a thought unworthy any member of that august body, to imagine he could have the least desire of spilling the blood of any of his fellow subjects, whom his majesty's great wisdom should think a fit object of his mercy; the said Earl therefore hopes that his prosecution is taken out of the common course of justice, with intention, that if in his particular case there shall appear any circumstances inducing favour or compassion, both your lordships and the Commons may be intercessors with his majesty for grace towards him; whereby the exercise of the royal mercy, upon which the Earl depended (which amongst all the virtues of the crown most endears a monarch to the love and affection of his people), may be extended in such manner as may demonstrate that clemency for which his majesty is so greatly renowned, and not encourage any to offend upon the presumption of it for the future. The said Earl acknowledges, with a real sorrow, that at the time in the Articles mentioned he was in arms, and with others did march through, and invade several parts of this kingdom; and confesses he is thereby guilty of the offence wherewith he is charged in the said

* See East's Pleas of the Crown, c. 2, s. 8.

Articles. But if any offence of that kind was ever attended with circumstances which might move compassion, the said Earl hopes he may be intitled to it: He begs leave to inform your lordships, that his temper and inclination disposed him to live peaceably under his majesty's government, and he never had the least prejudice or malice against his person, nor was he ever heretofore concerned in, or privy to, any design or contrivance to subvert or disturb the established government, the laws or religion of this kingdom; and if any methods were taken by others to accomplish any of those ends, he was absolutely a stranger to them; nor did he now engage in this unhappy undertaking upon any previous concert or contrivance for any such purpose; but being young and unexperienced, he rashly, and without any deliberation, engaged himself to meet at Plainfield in Northumberland, on assurance that many of his relations and acquaintance would appear there; that his undertaking was sudden, appears in that he engaged in it without any previous preparation of men, horses, arms, or other warlike accoutrements; and as the said Earl cannot be justly reproached with any cruel, severe, or harsh action during the continuance in arms, so he took the first opportunity that offered of submitting to the king's mercy. After the sudden skirmishes at Preston, the said Earl, with others, was solicitous to prevent any farther destruction of the lives of his majesty's subjects, and instrumental to induce all in arms to submit themselves to the king, provided they might be secured of their lives. One of his majesty's officers, sent from the general, gave them encouragement to believe, that the surrender of themselves would be the ready way to obtain the king's mercy: In confidence whereof, when a cessation was agreed on, the said Earl offered himself to become one of the hostages for them till the next morning, in which time he received further assurances from the officers, that the king was a prince of known clemency; that this was a distinguishing part of his character, and that the free surrender to mercy would be the most proper means to obtain it. The said Earl believes his majesty's officers were very sensible, and will be so just as to acknowledge, that it had not been impracticable for many of those at Preston to make their way through his majesty's forces; but this attempt must have occasioned the loss of many lives, and might have been productive of ill consequences to the government, which the said Earl was desirous to prevent; and when the time agreed on for the cessation was near expired, and general Wills seemed uneasy in not having received any message from those in the town, the said Earl writ a letter to exhort them to surrender to the king's mercy: and at the same time declared to the said general, and other officers, that whatever happened he was determined to continue with them, and rely entirely on his majesty's clemency and goodness, which he had encouragement to expect; and in such circumstances the said Earl cannot distrust your lordships, or the Commons readiness, to use their mediation for mercy on his behalf, which will lay him under the highest obligations of duty and affection to his majesty, and perpetual gratitude to both Houses of Parliament.

DERWENTWATER.

The material words of which Answer appearing not to be sufficiently express and clear, the Lord Chancellor asked the said Earl if he meant by the said Answer to plead Guilty to the high treason in the said Articles of Impeachment contained.

He said he did, and submitted to the king's mercy, and humbly desired their lordships' intercession to his majesty; and his said Answer and Plea was recorded accordingly.

And he withdrew.

Then the lord Widdrington was brought to the bar, and having there also kneeled, was acquainted by the Lord Chancellor with the aforementioned order, and asked the same question as the earl of Derwentwater; and he likewise delivered in his Answer, which was read as follows:

THE ANSWER OF WILLIAM LORD WIDDRINGTON TO THE ARTICLES OF IMPEACHMENT OF HIGH TREASON EXHIBITED AGAINST HIM BY THE HON. THE KNIGHTS, CITIZENS AND BURGESSES OF GREAT BRITAIN IN PARLIAMENT ASSEMBLED.

It is with inexpressible concern and affliction the said Lord appears before this august assembly charged with crimes of the most heinous nature; and though it is natural to mankind to endeavour to conceal their guilt, and make use of all manner of defence, especially in the case of life, yet as he surrendered himself at Preston, entirely relying on his majesty's mercy, so he is now resolved not to take any measures which may argue the least diffidence of that mercy, or of your lordships' goodness; and therefore the said Lord confesses he is guilty of the treason wherewith he is charged in the said Articles; and after having thus freely acknowledged his offence, he begs leave to lay his case before your lordships, and humbly hopes, when the particular circumstances are considered, it will not be thought to merit the most rigorous punishment, but that both your lordships, and the honourable House of Commons, will look upon him as a proper object of his majesty's clemency; and he humbly hopes he may not be thought the less unworthy of favour, in that he never before offended, nor was at any time privy to or acquainted with, any design or contrivance to destroy or disturb the established government, the laws or religion of this kingdom, but came unawares into this sudden

and unpremeditated action; for although he had met with public rumours and reports of intended invasions from abroad, and insurrections at home, yet he never knew, or any other way heard of, any formed design against the government, till he was told the night before of a meeting intended at Plainfield in Northumberland, on the 6th of October last; and being soon after informed that almost all his neighbours and acquaintance had there met in arms, he took a hasty and inconsiderate resolution of joining them; nor was he in any sort prepared for such an undertaking, having only some of his own family with him, no arms but his common fowling-pieces and wearing swords, and fewer horses than he had constantly kept for several years before; and nothing but the report of so many of his friends being engaged could have hurried him on to an enterprize so unaccountably rash and unjustifiable; and he is willing to hope your lordships will esteem it some alleviation of his crime, that in a commotion of that nature there was so little violation of the rights and properties of those who opposed them; for he believes few instances can be found, where such a multitude continued so long in arms without doing greater acts of violence and injustice. The said Lord cannot charge himself with any injurious acts to the property of his fellow-subjects, and endeavoured to prevent them in others; and hopes it was thence owing in some measure, that there was shewn all along greater marks of moderation and humanity than is common in such a warlike and hostile proceeding. The suddenness of the attack at Preston, without any previous summons, admitted no time for mediating a submission before the loss of that blood which was there unfortunately spilt; but after the heat and surprize of the first action was over, a cessation of arms was desired, and upon the mutual messages which then passed, the officers sent from the general encouraged them to believe the surrendering themselves would be the ready way to obtain the king's mercy, and gave them repeated assurances that they submitted to a prince of the greatest clemency in the world: upon these hopes and assurances they made a general surrender of themselves to the king; and the said lord may justly take notice to your lordships, that as he was the last who took up arms, so he was the first who procured a meeting of the chief persons among them, in order to lay them down; and cannot doubt but your lordships, and the honourable House of Commons, will think it equitable to make some distinction between an obstinate resistance and an early and humble submission, whereby the peace and tranquillity of this part of his majesty's dominions was entirely restored. Nature must have started at yielding themselves up to a certain and ignominious death, when it must be acknowledged that it was not impracticable for many of them to have escaped; and it was possible so great a number grown desperate might have obtained further success, and thereby prevented the so speedy suppressing that insurrection; but the said lord, and the rest, having with the utmost confidence relied on the assurances of his majesty's great clemency, and the hopes of mercy, which had been given them from the officers who commanded the royal forces, he is encouraged with great earnestness to implore the intercession of your lordships, and the honourable House of Commons, with his majesty, for that mercy on which they wholly depended; and as he doth not know where mercy was refused to those who so early and with so much resignation submitted to it, so he humbly hopes your lordships may be induced to think, that the exercise of this divine virtue by his majesty towards those who cast themselves at his royal feet upon the sole prospect and expectation of it, will appear no less glorious to his majesty, and prove no less advantageous to the future quiet and tranquillity of his government, than any examples of justice in such a case can be likely to do: and whatever marks of goodness and favour his majesty shall vouchsafe to the said Lord, will not fail to engage him by the strongest ties of gratitude, to demonstrate, in the future course of his life, the most constant inviolable duty to his majesty, and the most real esteem and veneration for your lordships and the honourable House of Commons. WIDDRINGTON.

And the said lord Widdrington being asked if he had any thing further to say, he begged to be excused all imperfections in his said Answer, said he had been indisposed with the gout in his stomach, and was not able to employ himself in preparing his Answer till last night, and finished it but this morning, and humbly implored their lordships' intercession to his majesty for favour and mercy; and his Answer and Plea was recorded accordingly. And he withdrew.

Then the Earl of Nithisdale was brought to the bar, and having there likewise kneeled, was acquainted with the forementioned order, and asked the same question as the earl of Derwentwater, and he also delivered in his Answer, which was read as follows:

THE ANSWER OF WILLIAM EARL OF NITHISDALE, TO THE ARTICLES OF IMPEACHMENT OF HIGH TREASON EXHIBITED AGAINST HIM BY THE HON. THE KNIGHTS, CITIZENS AND BURGESSES OF GREAT-BRITAIN IN PARLIAMENT ASSEMBLED.

It is with the utmost confusion the said Earl appears at your lordships' bar, under the weight of an impeachment by the Commons of Great-Britain for high-treason; he humbly begs leave, in extenuation of his crime, to assure your lordships, that he was always a zealous asserter of the liberties of his country, and never engaged in forming or carrying on any design

to subvert the ancient established government and the good laws of this kingdom; but being summoned by those entrusted with the administration of the government in Scotland to appear at Edinburgh, and being assured if he went thither he should be made close prisoner, he did not obey the summons; but in all humble manner applied for their indulgence in dispensing with his being committed to gaol, offering to give any bail for his peaceable and quiet behaviour; which being refused, and being at that time in so ill a state of health, that a confinement in Edinburgh castle would have endangered his life, he was forced to abscond, and kept private till several of the persons mentioned in the said Impeachment, with many other of his neighbours, appeared in arms very near the place where the said Earl lay concealed; and then he inconsiderately and unfortunately (with four of his domestics, and no other person whatsoever) joined them, and proceeded in their company to the places in the said Articles of Impeachment mentioned; but he knew nothing of the intended insurrection till they were actually in arms. The said Earl is deeply sensible of his great offence, and not affecting delay, nor being willing to give your lordships, or the honourable House of Common, any unnecessary trouble; he does with a sorrow equal to his crime, confess, that he is guilty of the treason in the said Articles of Impeachment contained, and throws himself at his majesty's feet imploring his royal mercy; and to incline his majesty thereto, and induce your lordships to recommend him as an object thereof, he begs leave to inform your lordships, that when he, and the rest that were with him at Preston, had engaged in a battle, a cessation of arms being agreed to, they had intimations from his majesty's officers, that if they submitted, they might expect the king's mercy; and history abounding with instances of conditions stipulated with generals, even with rebels; and afterwards agreed to and confirmed by their sovereigns, they were prevailed on by such encouragement, together with the consideration of his majesty's known clemency, to surrender themselves prisoners, whereby the lives of great numbers of his majesty's good subjects were saved, which by an obstinate resistance would inevitably have been destroyed; and therefore he most humbly begs your lordships would be pleased to represent his case to his majesty in the most favourable manner; not doubting but by your lordships' powerful intercession he shall find, that as he performed the duty of a good Christian, in endeavouring to prevent the effusion of blood; so he acted the part of a wise man in relying upon a mercy so extensive as that of his majesty: and he presumes, when the honourable House of Commons are apprized of the nature of his case, they will not interpose to prevent him from having a share in the benefit of that mercy. NITHISDALE.

And the said earl of Nithisdale being asked if he had any thing further to say, he said he had nothing but to implore the king's mercy; and his Answer and Plea was recorded accordingly. And he withdrew.

Then the Earl of Carnwath was brought to the bar, and having there likewise kneeled, was acquainted by the Lord Chancellor with the forementioned order, and asked the same question as the earl of Derwentwater.

He said he had no Answer in writing, but desired to throw himself on the king's mercy, and humbly implore their lordships' intercession to his majesty on his behalf; and assured the House, if the same were granted, he should think himself obliged to live under the strictest ties of loyalty to his majesty; and as to the said Articles, he said he was Guilty of the high-treason contained in the said Articles of Impeachment against him; and the said Plea was recorded accordingly. And he withdrew.

Then the viscount Kenmure was brought to the bar, and having there kneeled also, was acquainted by the Lord Chancellor with the forementioned order, and asked the same question as the earl of Derwentwater.

He said he had no Answer in writing, but was guilty of the charge of high-treason contained in the Articles of Impeachment against him, and begged the House would intercede with his majesty for mercy; and his Plea was recorded accordingly. And he withdrew.

Then the lord Nairn was brought to the bar, and having there also kneeled, was acquainted by the Lord Chancellor with the forementioned order, and asked the same question as the earl of Derwentwater.

He said he threw himself upon the king's mercy, and begged the intercession of this House to his majesty; and as to the Articles of Impeachment exhibited against him, he said he was Guilty of the high-treason contained in the said Articles; and his Plea was recorded accordingly.

Then he delivered in a Petition at the bar; and the same was read as follows:

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled; The Humble PETITION of WILLIAM Lord NAIRN.

Sheweth; That your petitioner was educated, and hath always continued a Protestant, according to the discipline of the Church of England; and though, by reason of some mistaken principles he unwarily imbibed in his tender years, he did not in all respects conform to the late Revolution, lying under the less necessity, for that he had married an heiress, in whom all the right of your petitioner's estate is invested; and though he never took the oaths, yet he always peaceably submitted to, and lived quietly under, the government as by law established, until the breaking out of this rebellion, in which your petitioner was inadvertently involved, but not before the lord Mar

and his adherents had for a considerable time made themselves masters of Perth and Dunkeld, and thereby surrounded your petitioner's whole estate, and came to your petitioner's house, lying in the middle between those places.

Your petitioner heartily repents of this rash undertaking, and solemnly declares he knew nothing of any previous consultations or conspiracies in favour of the Pretender, before he actually appeared in arms; nor knew any thing about crossing the Forth, until the morning he was sent over under Macintoch's command; and then was so far from approving of that expedition, that though, to avoid the imputation of cowardice, he would hazard his own person therein, your petitioner ordered back all his dependants, and was only attended by his son and four servants, who would not leave him in a time of danger, though often desired: nor was your petitioner privy to any designs of marching into England; for having been bred a seaman, he had no pretensions to knowledge in the land service.

Your petitioner being now sensible of his errors, hath pleaded Guilty to the Articles of Impeachment of high-treason exhibited against him by the honourable House of Commons, and thrown himself at his majesty's feet: humbly beseeching your lordships, in commiseration of the deplorable circumstances of your petitioner and his twelve children, to recommend him to his majesty for that mercy, which at the time of his surrender he was made to believe he might reasonably expect.

This will lay your petitioner and his posterity under the greatest obligations of duty and gratitude to his majesty, and bind them for ever to bless your lordships as the merciful instruments of procuring such a gracious deliverance. And your petitioner shall ever pray, &c. NAIRN.

And being asked if he had any thing further to say, he said he had not; and withdrew.

Lord High Steward. My lords that are the prisoners at the bar, I am to acquaint your lordships, that upon any occasion which shall be offered you to speak for yourselves, you are to direct your speech to the Lords in general; and so is any other person that shall have occasion to speak to this Court.

Lord High Steward. James earl of Derwentwentwater, William lord Widdrington, William earl of Nithisdale, Robert earl of Carnwath, William viscount Kenmure, and William lord Nairn, you stand impeached of high-treason by the Commons of Great Britain in parliament assembled; which treason is contained in the Articles that have been lately read; to this you have severally pleaded Guilty, and are thereby convicted. What say you, James earl of Derwentwater, why judgment should not pass upon you according to law?

Earl of *Derwentwater.* I only humbly beg leave of my noble peers to repeat a few circumstances mentioned in my Answer to the Articles of Impeachment exhibited against me by the honourable House of Commons.

But the terrors of your lordships' just sentence, which at once deprive me of my life and estate, and complete the misfortunes of my wife and innocent children, are so heavy upon my mind, together with my unexperience, that I am scarce able to allege what may extenuate my offence, if any thing can do it. I have confessed myself guilty; but, my lords, that guilt was rashly incurred without any premeditation, as I hope your lordships will be convinced by one particular: I beg leave to observe, I was wholly unprovided with men, horses, arms and other necessaries, which in my situation I could not have wanted, had I been privy to any formed design: As my offence was sudden, so my submission was early; when his majesty's generals thought fit to demand hostages for securing the terms of the cessation, I voluntarily offered myself, without which the cessation might possibly have proved ineffectual: And whilst I continued hostage, the great character of his majesty's clemency, and the repeated encouragement I had to hope for mercy, by surrendering to it, soon determined me; and I accordingly declared my resolution to remain with his majesty's forces, and from that time submitted myself to his goodness, on which I still entirely depend. I humbly hope to obtain the mediation of your lordships, and of the honourable House of Commons in my behalf; solemnly protesting my future conduct shall shew me not altogether unworthy your generous compassion for my life, which is all I can beg of his majesty.

Lord High Steward. My lord Derwentwater, your lordship's voice hath not been perfectly heard to this end of the Court, therefore I ask you whether you have pleaded any thing in arrest of judgment?

Lord *Derwentwater.* No, my lords.

Lord High Steward. Lord Widdrington, what have you to say for yourself why judgment should not pass upon you according to law?

Lord *Widdrington.* My lords, I have abandoned all manner of defence ever since I first surrendered myself to his majesty's royal clemency, and only now beg leave to repeat to your lordships some circumstances of my unhappy case, which I have already set forth in my Answer.

Your lordships see before you an unfortunate man, who after leading a private and retired life for many years, has by one rash and inconsiderate action exposed himself and his family to the greatest calamities and misery, and is now upon the point of receiving the severest sentence directed by any of our English laws.

I do protest to your lordships, that I was never privy to any concerted measures against his majesty's royal person, or the established government: As to the insurrection in Northumberland, I only heard of it accidentally the

night before it happened, and being soon after informed that all my neighbours and acquaintance had met in arms, a crowd of confused and mistaken notions hurried me at once into a precipitate resolution of joining them; a resolution which, I must own, I could never since calmly reflect upon without part of that confusion I find myself under in the public acknowledgment of so much rashness and folly. After thus plunging out of my depth, as unprepared for such an enterprize as the action was unpremeditated, I cannot, for my own particular, upon the strictest recollection, charge myself with any violation of the properties of my fellow-subjects: But on the contrary, I always endeavoured to encourage humanity and moderation during the whole course of our miserable expedition; and in order to make the best atonement in my power for the great fault I had been guilty of, I can justly say, that I was in no small degree instrumental in procuring a general submission to his majesty. But, my lords, however willing or desirous, either I or any others might be to put a speedy end to those unfortunate troubles; self preservation, the first, and most powerful law of nature, would have rendered the proposal vain and fruitless, had not the officers who commanded the royal forces given us hopes of mercy, and assured us we submitted to a prince of the greatest clemency in the world. These hopes and this assurance, answered the strongest objections, overcame all remaining difficulties, and gave the finishing stroke to a general surrender, whereby the further effusion of British blood was prevented, and a perfect tranquillity restored to these parts of his majesty's dominions.

My lords, as this my first attempt was rash and unpremeditated, as I always used and promoted moderation and humanity towards my fellow-subjects, and as I did not obstinately persist in my fault, but was the first who proposed an early submission to his majesty, I humbly hope my unhappy case, and the deplorable condition of my unfortunate children, already deprived of their tender mother, will raise a generous compassion in your lordships, and the honourable House of Commons; and I must earnestly entreat both your lordships, and that honourable House, to become intercessors with his majesty in my behalf, for that mercy which I was encouraged to hope for when I first surrendered, and which I have ever since with the utmost confidence relied on.

I have only to add my most solemn assurance before this august assembly, that no future time shall ever find me wanting in the most inviolable duty and gratitude to that merciful prince who gives me my life, and restores a father to five miserable and distressed orphans; and I shall always retain the highest esteem and veneration for your lordships and the honourable House of Commons.

Lord High Steward. Lord Widdrington, for greater certainty I ask your lordship whether you ave pleaded any thing in Arrest of Judgment?

Lord *Widdrington.* No, my lords, I have not.

Lord High Steward. William earl of Nithisdale, what hath your lordship to say for yourself why Judgment should not pass upon you according to law?

Lord *Nithisdale.* My lords, I have confessed myself guilty, relying on his majesty's mercy; and I beg leave to assure your lordships I was never privy to any plot or design against his majesty's person or government, and was unprovided with any necessaries for such a purpose; but rashly and inconsiderately, with only four of my servants, joined those who appeared in arms in my neighbourhood, and was one of the last who went unto them.

At Preston, my lords, his majesty's generals gave great hopes and encouragement to believe, that surrendering to his majesty's mercy, was the ready way to obtain it, with repeated assurances that his majesty was a prince of the greatest clemency.

Upon those hopes and assurances I submitted myself, and still entirely depend on his majesty's goodness, earnestly beseeching your lordships, and the honourable House of Commons, to intercede with his majesty on my behalf.

And I solemnly promise your lordships I shall, during the remainder of my life, pay the utmost duty and gratitude to his most gracious majesty, and the highest veneration and respect to your lordships and the honourable House of Commons.

Lord High Steward. I must also ask your lordship (your lordship's voice not reaching thus far) whether you have pleaded any thing in Arrest of Judgment?

Lord *Nithisdale.* No, my lords, I have not.

Lord High Steward. Lord Carnwath, what have you to say for yourself why Judgment should not pass upon you according to law?

Lord *Carnwath.* My lords, I shall not trouble this great assembly with a repetition of what I said, when formerly before your lordships and his majesty's council.

I hope these noble lords entertain that favourable opinion of my sincere dealing then, as to believe that want of experience and knowledge of the laws was the great inducement of engaging me in this fatal and unhappy undertaking.

The only thing which I can hope or wish for is his majesty's mercy; he has the character of a merciful prince: should it please him to think me a proper object for it (though I must confess myself a very unworthy one,) all I can say, my lords, is, that the remainder of my life shall convince his majesty, and all the world, of my true penitence and gratitude.

My lords, I am yet an unworthy member of this great body, the peerage, now expecting your lordships' Judgment as to life or death;

should it be for life, my demeanor and carriage for the future will be such, as none of your lordships shall be ashamed of having shewed me compassion; but should it be for death, God's will be done; to my last hour I shall pray for the nation's and your lordships' prosperity; having this comfort in my present distress, that your lordships are my judges at this tribunal: and yet a greater comfort have I, that I am soon to appear before a greater, where I cannot despair of finding mercy and forgiveness for all my sins.

I beg Almighty God's pardon for them: I have already asked his majesty's, and I do it now; and I do humbly beg leave, once more, and perhaps the last occasion that ever I shall have, to desire that your grace, this noble House, and the honourable House of Commons of Great Britain, who are now here, would intercede with his majesty for me.

I take my leave of your lordships, and wish you all happiness.

Lord High Steward. Does your lordship offer any thing in Arrest of Judgment?

Lord *Carnwath.* No, my lords.

Lord High Steward. Lord Kenmure, what have you to say for yourself why Judgment should not pass upon you according to law?

Lord *Kenmure.* My lords, I am truly sensible of my crime, and want words to express my repentance. God knows I never had any personal prejudice against his majesty, nor was I ever accessary to any previous design against him. I humbly beg my noble Peers and the honourable House of Commons to intercede with the king for mercy to me, that I may live to shew myself the dutifullest of his subjects, and to be the means to keep my wife and four small children from starving; the thoughts of which, with my crime, make me the most unfortunate of all gentlemen.

Lord High Steward. My lord, your voice not being heard to this end of the Court, I would know whether, in what you have said, you have offered any thing in Arrest of Judgment?—Lord *Kenmure.* No, my lords.

Lord High Steward. Lord Nairn, what have you to say for yourself why Judgment should not pass upon you according to law?

Lord *Nairn.* I am very sensible how unfit I am to plead my own cause before your grace (my lord high steward) and this august assembly; and therefore, though I could say much to extenuate the crime for which I stand impeached, yet I chuse rather to lay my whole stress upon the king's mercy, for which he is so renowned, and which I was put in hopes of at the time of my surrender. In consideration whereof, and in compassion to an afflicted wife and twelve children, I still hope, by the mediation of your grace, my noble lords, and the honourable House of Commons, I may obtain it; solemnly protesting, that in gratitude for so signal a deliverance, I will, to the end of my life, remain a dutiful and obedient subject to his most gracious and sacred majesty king George.

**Lord High Steward.* My lord, for greater certainty, I ask your lordship whether you have offered any thing in Arrest of Judgment?

Lord *Nairn.* No, my lords.

Serjeant at Arms. O Yes, O Yes, O Yes! Our sovereign lord the king strictly charges and commands all manner of persons to keep silence upon pain of imprisonment.

Lord High Steward. James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, Robert earl of Carnwath, William viscount Kenmure, William lord Nairn;

You stand impeached, by the Commons of Great Britain in parliament assembled, of high treason, in traitorously imagining and compassing the death of his most sacred majesty, and in conspiring for that end to levy a bloody and destructive war against his majesty, in order to depose and murder him; and in levying war accordingly, and proclaiming a Pretender to his crown to be king of these realms.

Which Impeachment, though one of your lordships, in the introduction to his Plea, supposes to be out of the ordinary and common course of the law and justice, is yet as much a course of proceeding according to the common law, as any other whatsoever.

If you had been indicted, the indictment must have been removed and brought before the House of Lords (the parliament sitting.) In that case you had (it is true) been accused only by the grand jury of one county; in the present, the whole body of the Commons of Great Britain, by their representatives, are your accusers.

And this circumstance is very observable (to exclude all possible supposition of hardship as to the method of proceeding against you,) that however all great assemblies amongst us are apt to differ on other points, you were impeached by the unanimous opinion of the House of Commons (not one contradicting.)

They found themselves, it seems, so much concerned in the preservation of his most truly sacred majesty, and the Protestant Succession (the very life and soul of these kingdoms,) that they could not omit the first opportunity of taking their proper part, in order to so signal and necessary an act of his majesty's justice.

And thus the whole body politic of this free kingdom has in a manner rose up in its own defence, for the punishment of those crimes, which, it was rightly apprehended, had a direct tendency to the everlasting dissolution of it.

To this Impeachment you have severally pleaded, and acknowledged yourselves Guilty of the high-treason therein contained.

Your Pleas are accompanied with some variety of matter, to mitigate your offences, and to obtain mercy.

Part of which, as some of the circumstances said to have attended your surrender (seeming to be offered rather as arguments only for mercy, than any thing in mitigation of your preceding guilt) is not proper for me to take notice of.

But as to the other part, which is meant to extenuate the crimes of which you are convicted, it is fit I should take this occasion to make some observations to your lordships upon it, to the end that the judgment to be given against you may clearly appear to be just and righteous, as well as legal; and that you may not remain under any fatal error in respect of a greater judicature, by reflecting with less horror and remorse on the guilt you have contracted than it really deserves.

It is alleged by some of your lordships, that you engaged in this rebellion without previous concert or deliberation, and without suitable preparations of men, horses and arms.

If this should be supposed true, on some of your lordships averring it, I desire you to consider, that as it exempts you from the circumstance of contriving this treason, so it very much aggravates your guilt in that part you have undoubtedly borne in the execution of it.

For it shews, that your inclinations to rebel were so well known (which could only be from a continued series of your words and actions,) that the contrivers of that horrid design depended upon you, and therein judged rightly: That your zeal to engage in this treason was so strong, as to carry you into it on the least warning, and the very first invitation: That you would not excuse yourselves by want of preparation, as you might have done; and that rather than not have a share in the rebellion, you would plunge yourselves into it, almost naked and unprovided for such an enterprize: In short, that your men, horses, and arms were not so well prepared as they might, and would have been on longer warning; but your minds were.

It is alleged also as an extenuation of your crime, that no cruel or harsh action (I suppose is meant no rapine or plunder, or worse) has been committed by you.

This may, in part only, be true. But then your lordships will at the same time consider, that the laying waste a tract of a land bears but a little proportion in point of guilt, compared with that crime of which you stand convicted; an open attempt to destroy the best of kings, to ruin the whole fabric, and raze the very foundations of a government, the best suited of any in the world, to perfect the happiness, and support the dignity of human nature: The former offence causes but a mischief that is soon recovered, and is usually pretty much confined; the latter, had it succeeded, must have brought a lasting and universal destruction on the whole kingdom.

Besides, much of this was owing to accident; your march was so hasty, partly to avoid the king's troops, and partly from a vain hope to stir up insurrections in all the counties you passed through, that you had not time to spread devastation, without deviating from your main and, as I have observed, much worse design.

Farther, it is very surprising, that any concerned in this rebellion should lay their engaging in it on the government's doing a necessary and usual act in like cases for its preservation; the giving orders to confine such as were most likely to join in that treason: It is hard to believe that any one should rebel, merely to avoid being restrained from rebelling; or that a gentle confinement would not much better have suited a crazy state of health, than the fatigues and inconveniencies of such long and hasty marches in the depth of winter.

Your lordships rising in arms therefore, has much more justified the prudence and fitness of those orders, than those orders will in any wise serve to mitigate your treason. Alas! happy had it been for all your lordships had you fallen under so indulgent a restraint!

When your lordships shall in good earnest apply yourselves to think impartially on your case, surely you will not yourselves believe, that it is possible, in the nature of the thing, to be engaged, and continue so long engaged, in such a difficult and laborious enterprize, through rashness, surprize, or inadvertency: Or that, had the attack at Preston been less sudden, (and consequently the rebels better prepared to receive it) your lordships had been reduced the sooner, and with less, if not without any bloodshed.

No, my lords; these, and such like, are artful colourings, proceeding from minds filled with expectation of continuing in this world; and not from such as are preparing for their defence before a tribunal, where the thoughts of the heart, and the true springs and causes of actions, must be laid open.

And now, my lords, having thus removed some false colours you have used; to assist you yet farther in that necessary work of thinking on your great offence as you ought, I proceed to touch upon several circumstances that seem greatly to aggravate your crime, and which will deserve your most serious consideration.

The divine virtues (it is one of your lordships' own epithets,) which all the world as well as your lordships acknowledge to be in his majesty, and which you now lay claim to, ought certainly to have withheld your hands from endeavouring to depose, to destroy, to murder that most excellent prince; so the Impeachment speaks, and so the law construes your actions; and this is not only true in the notion of law, but almost always so in deed and reality: It is a trite, but very true remark, that there are but few hours between kings being reduced under the power of pretenders to their crown, and their graves. Had you succeeded, his majesty's case would, I fear, have hardly been an exception to that general rule, since it is highly improbable, that flight should have saved any of that illustrious and valiant family.

It is a farther aggravation of your crime, that

his majesty, whom your lordships would have dethroned, affected not the crown by force, or by the arts of ambition, but succeeded peaceably and legally to it; and on the decease of her late majesty without issue, became undoubtedly the next in course of descent capable of succeeding to the crown, by the law and constitution of this kingdom; as it stood declared some years before the crown was expressly limited to the House of Hanover. This right was acknowledged, and the descent of the crown limited or confirmed accordingly, by the whole legislature in two successive reigns; and more than once in the latter, which your lordships' accomplices are very far from allowing, would bias the nation to that side.

How could it then enter into the heart of men, to think that private persons might with a good conscience endeavour to subvert such a settlement, by running to tumultuary arms; and by intoxicating the dregs of the people with contradictory opinions, and groundless slanders; or that God's providence would ever prosper such wicked, such ruinous attempts?

Especially, if in the next place it be considered, that the most fertile inventions on the side of the rebellion, have not been able to assign the least shadow of a grievance as the cause of it: To such poor shifts have they been reduced on this head, that for want of better colours, it has been objected, in a solemn manner, by your lordships' associates to his majesty's government; that his people do not enjoy the fruits of peace as our neighbours have done since the last war: Thus they first robbed us of our peace, and then upbraid us that we have it not. It is a monstrous rebellion that can find no fault with the government it invades, but what is the effect of the rebellion itself.

Your lordships will likewise do well to consider what an additional burthen your treason has made necessary on the people of this kingdom; who wanted, and were about to enjoy some respite: To this end it is well known, that all new, or increase of taxes, were the last year carefully avoided, and his majesty was contented to have no more forces than were just sufficient to attend his person, and shut the gates of a few garrisons.

But what his majesty thus did for the ease and quiet of his people, you most ungratefully turned to his disadvantage, by taking encouragement from thence, to endanger his and his kingdom's safety, and to bring oppression on your fellow-subjects.

Your lordships observe I avoid expatiating on the miseries of a civil war, a very large and copious subject; I shall but barely suggest to you on that head, that whatever those calamities may happen to be in the present case, all who are at any time, or in any place partakers in the rebellion (especially persons of figure and distinction) are in some degree responsible for them: and therefore your lordships must not hold yourselves quite clear from the guilt of those barbarities which have been lately committed, by such as are engaged in the treason with you, and not yet perfectly reduced, in burning the habitations of their countrymen, and thereby exposing many thousands to cold and hunger in this rigorous season.

I must be so just to such of your lordships, as profess the religion of the Church of Rome, that you had one temptation, and that a great one, to engage you in this treason, which the others had not; in that it was evident, success on your part must for ever have established Popery in this kingdom, and that probably you could never have again so fair an opportunity.

But then, good God! how must those Protestants be covered with confusion, who entered into the same measures, without so much as capitulating for their religion (that ever I could find from any examination I have seen or heard), or so much as requiring, much less obtaining a frail promise, that it should be preserved, or even tolerated.

It is my duty to exhort your lordships thus, to think of the aggravations, as well as the mitigations (if there be any) of your offences; and if I could have the least hopes, that the prejudices of habit and education would not be too strong for the most earnest and charitable entreaties, I would beg you not to rely any longer on those directors of your consciences, by whose conduct you have, very probably, been led into this miserable condition; but that your lordships would be assisted by some of those pious and learned divines of the Church of England, who have constantly bore that infallible mark of sincere Christians, universal charity.

And now, my lords, nothing remains, but that I pronounce upon you (and sorry I am that it falls to my lot to do it) that terrible sentence of the law, which must be the same that is usually given against the meanest offender in the like kind.

The most ignominious and painful parts of it are usually remitted by the grace of the crown to persons of your quality; but the law in this case being deaf to all distinctions of persons, requires I should pronounce, and accordingly it is adjudged by this Court,

'That you, James earl of Derwentwater, 'William lord Widdrington, William earl of 'Nithisdale, Robert earl of Carnwath, William 'viscount Kenmure, and William lord Nairn, 'and every of you, return to the prison of the 'Tower from whence you came; from thence 'you must be drawn to the place of execution; 'when you come there, you must be hanged 'by the neck, but not till you be dead; for you 'must be cut down alive, then your bowels 'must be taken out, and burnt before your 'faces; then your heads must be severed from 'your bodies, and your bodies divided each into 'four quarters; and these must be at the king's 'disposal.'*

* As to the form of the judgment for high treason, and the mode of entering it, see vol. 2, p. 31; vol. 14, p. 988; and East's Pl. Cr. c. 2, s. 70, as there referred to.

'And God Almighty be merciful to your 'souls.'

Serjeants at Arms. O Yes! Our sovereign lord the king strictly charges and commands all manner of persons to keep silence, upon pain of imprisonment.

Then the Lord High Steward stood up uncovered, and declaring there was nothing more to be done by virtue of the present commission, broke the staff, and pronounced it dissolved: and then leaving the chair, came down to the wool-pack, and said, Is it your lordships' pleasure to adjourn to the House of Lords?

Lords. Ay, ay.

And then the House adjourned to the House above, and the Lords and others returned in the same order they came down.

After Sentence past, great interest was made on their behalf for mercy; insomuch, that the House of Lords presented an Address to the king, "To reprieve such of them as should deserve his mercy;" to which the king only answered, "That on this and all other occasions he would do what he thought most consistent with the dignity of his crown, and the safety of his people." However, lord Widdrington, lord Carnwath, and lord Nairn, were reprieved, and afterwards pardoned; but the other three, lord Derwentwater, lord Nithisdale and lord Kenmure, were ordered for execution on February 24.

The earl of Nithisdale escaped the blow, having found means of getting out of the Tower in disguise, the very night before the execution.*

Early the next morning the scaffold on Tower-hill was surrounded with the guards, and a little before ten o'clock the earl of Derwentwater, and the lord viscount Kenmure, were carried in an hackney coach from the Tower, to the Transport-office on Tower-hill, where there was a room hung with black for their reception, and there was a passage or gallery railed in, which led from thence to the scaffold, which was also covered with black.

The earl of Derwentwater was first led to the scaffold, where having spent some time in praying with a book, he then addressed himself to the sheriff, and desired the liberty to read a paper, which he had drawn up: this request being readily granted, he went to the rails of the scaffold and read as follows:

"Being in a few minutes to appear before the tribunal of God, where, though most unworthy, I hope to find mercy, which I have not found from men now in power, I have endeavoured to make my peace with his Divine Majesty, by most humbly begging pardon for all the sins of my life; and I doubt not of a merciful forgiveness, through the merits of the passion of and death of my Saviour Jesus Christ: for which end I earnestly desire the prayers of all good Christians.

"After this, I am to ask pardon of those whom I might have scandalized by pleading guilty at my trial. Such as were permitted to come to me, told me that having been undeniably in arms, pleading guilty was but the consequence of having submitted to mercy; and many arguments were used to prove there was nothing of moment in so doing; among others the universal practice of signing leases, whereof the preambles run in the name of the person in possession.

"But I am sensible that in this I have made bold with my loyalty, having never owned any other but king James the third for my rightful and lawful sovereign; him I had an inclination to serve from my infancy, and was moved thereto by a natural love I had to his person, knowing him to be capable of making his people happy; and though he had been of a different religion from mine, I should have done for him all that lay in my power, as my ancestors have done for his predecessors, being thereto bound by the laws of God and man.

"Wherefore, if in this affair I have acted rashly, it ought not to affect the innocent; I intended to wrong nobody, but to serve my king and country, and that without self-interest; hoping by the example I gave, to have induced others to their duty; and God, who sees the secrets of my heart, knows I speak truth. Some means have been proposed to me for saving my life, which I looked upon as inconsistent with honour and conscience, and therefore I rejected them; for, with God's assistance, I shall prefer any death, to the doing a base, unworthy action. I only wish now, that the laying down my life might contribute to the service of my king and country, and the re-establishment of the ancient and fundamental constitution of these kingdoms; without which, no lasting peace, or true happiness, can attend them; then I should, indeed, part with life even with pleasure: as it is, I can only pray, that these blessings may be bestowed upon my dear country; and since I can do no more, I beseech God to accept of my life, as a small sacrifice towards it.

"I die a Roman Catholic; I am in perfect charity with all the world, I thank God for it, even with those of the present government, who are most instrumental in my death. I freely forgive such as ungenerously reported false things of me; and I hope to be forgiven the trespasses of my youth, by the Father of infinite mercy, into whose hand I commend my soul. JA. DERWENTWATER."

P. S. "If that prince who now governs, had given me my life, I should have thought myself obliged never more to have taken up arms against him."

After the reading this Paper,* he delivered it

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* The king being told of this the next morning, merrily said, "It was the best thing a man in his condition could have done." *Former Edition.*

* It was published by order of the Sheriffs of London.

to the sheriff to do with it as he pleased. Then turning to the block he viewed it close, and finding in it a rough place, which might offend his neck, he bid the executioner chip it off. Having prepared himself for the blow by pulling off his coat and waistcoat, he lay down to fit his head to the block, telling the executioner that the sign he should give him was, Lord Jesu receive my Soul, and at the third time of repeating it he was to do his office; which accordingly he did at one blow.*

Immediately after the earl of Derwentwater was executed as above, the lord Kenmure was brought to the scaffold, accompanied by his son and some friends, and attended by two clergymen of the Church of England, which was the religion he professed. He made no formal speech, but testified his sorrow for having pleaded guilty. Then laying down his head on the block, he raised it up again, and still continuing on his knees, gave the executioner some money, and told him, he would give him no sign, but that when he laid down his head again, he might perform his office as he saw good. Then having lifted up his hands a short time in prayer, he resolutely laid down his head, which at two blows was severed from his body.

Upon lord Derwentwater's death a curious question arose, as to the force of the word 'purchase' in the stat. 11 & 12 W. 3, c. 4. See the Appeal of the Lord Derwentwater, 9 Mod. p. 172.

The lord Kenmure made no speech, nor delivered any paper; but the following Letter of his to a nobleman, was printed soon after his death.

A True Copy of a Letter written by the Lord Viscount Kenmure to a certain Nobleman, the day before his execution.

"My very good lord;—Your lordship has interested yourself so far in mine, and the lords my fellow-prisoners behalf, that I should be the greatest criminal now breathing, should I, whether the result of your generous intercession is life or death, be neglectful of paying my acknowledgments for that act of compassion.

"We have already discoursed of the motives that induced me to take arms against the prince, now in possession of the throne, when you did me the honour of a visit, three days since, in my prison here: I shall therefore wave that point, and lament my unhappiness, for joining with the rest of the lords in pleading Guilty, in hopes of that mercy, which the generals Wills and Carpenter will do us the justice to say was promised us by both of them.

"Mr. Piggot and Mr. Eyres, the two lawyers employed by us, advised us to this plea; the avoiding of which might have given us further time, for looking after the concerns of another life, though it had ended in the same sentence of losing this, which we now lie under. Thanks be to the Divine Majesty, to whose infinite mercy, as king of kings, I recommend myself, in hopes of forgiveness, though it shall be my fate to fail of it here on earth.

"Had the House of Commons thought fit to have received our petition with the same candour as yours has done, and recommended us to the compassion of the prince now reigning, we might then have entertained some hopes of life; but the answer from St. James's is such, as to make us have little or no thoughts of it.

"Under these dismal apprehensions then of approaching dissolution, which I thank my good God for his holy guidance I have made due preparation for, give me leave to tell you, that howsoever I have been censured on account of the family of the Gordons, which I am an unhappy branch of, that I have ever lived and will die in the profession of the Protestant religion, practised in the church, governed by bishops; and that I abhor all king-killing doctrines, that are taught by the Church of Rome, as dangerous and absurd: And that though I have joined with some that have taken arms, of that persuasion, no other motive, but that of exercising my loyalty to the person called the Pretender, whom I firmly believe to be the true son of the late king James the second, and in defence of whose title I am now going to be a sacrifice, has induced me to it.

"Your lordship will remember the papers I have left with you, and deliver them to my son. They may be of use to his future conduct in life, when these eyes of mine are closed by death, which I could have wished might have stolen upon me by the ordinary course of nature, and not by the hands of an executioner.

"But as my blessed Saviour and Redeemer suffered an ignominious and cruel death, and the Son of God made flesh did not disdain to have his hands and feet nailed to the cross, for the sins of the world; so may I, poor miserable sinner, as far as human nature will allow, patiently bear with the hands of violence, that I expect suddenly to be stretched out against me.

"Your lordship will also, provided there is no hopes of a reprieve this night, make me acquainted with it as soon as possible, that I may

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* On the 18th of May in this same year 1716, was tried and convicted of high treason, Charles Radcliffe, brother to the earl of Derwentwater. It appears that his execution was several times respited. On the 11th of Dec. 1716, he with some others broke out of the gaol of Newgate and escaped. After various adventures, he was, in November 1745, taken on board a French vessel bound to Scotland; and in the following year having been arraigned upon his former conviction and attainder, he pleaded, that he was not the person mentioned in the record before the court; issue being joined upon this plea, and a jury finding a verdict that he was the same, &c. execution was awarded and done upon him. See his case in this Collection.

meet that fate with readiness, which in a state of uncertainty I expect with uneasiness. I must also be pressing with your lordship, that if, in case of death, any paper under my name should come out as pretended to be written by me, in the manner or form of a speech, you will not believe it to be genuine; for I that am heartily sorry for disowning my principles, in one spoken before your lordship, and the rest of my peers, will never add to that act of indiscretion, by saying any thing on the scaffold, but my prayers, for the forgiveness of my poor self, and those that have brought me to be a spectacle to men and angels, especially since I must speak in my last moments according to the dictates of my conscience, and not prevaricate, as I did before the Lords, for which I take shame to myself; and such a method of proceeding might do injury to my brother Carnwath, who, I am told, is in a much fairer way than I am, of being not excluded from grace. I have nothing farther than to implore your lordship to charge your memory with the recommendations I gave you to my wife, and the rest of my children; beseeching God, that he will so sanctify their afflictions, that after the pains and terrors of this mortal life, they may with me be translated to the regions of everlasting joy and happiness: To which blessed state of immortality, your lordship shall also, while I am living, be recommended in the prayers of, my very good lord, your most affectionate kinsman, &c.

"KENMURE."

"From my Prison in the Tower of London, Feb. 23, 1715."

When the lord Kenmure was brought on the scaffold, he was attended by two divines, Mr. H——s and Mr. Cockburn, the latter being not sent for till the night before, and told by him, He had so little thoughts of dying then, that he had not provided a black suit, that he might have died with more decency; for which he was sorry. As soon as he came on the scaffold he kneeled down, leaning one of his hands on the rail, and the divines prayed with him. He seemed to be very sincere and fervent in his devotions, often lifting up his hands and eyes to heaven: He had the undertaker, Mr. Roome, with him, to take care of his body, and a surgeon, who was to direct the executioner in doing his office, which he did, by drawing his finger over that part of his neck where the blow was to be given. The viscount kissed the officers and gentlemen on the scaffold all round, and some of them twice or thrice; and being asked, Whether he had any thing to say, or any speech to deliver? he said, No. He prayed for the Pretender, and repented of his having pleaded guilty, and died after a very courageous manner.

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450. The Trial of GEORGE Earl of WINTOUN, before the House of Lords, upon an Impeachment for High-Treason:* March 15, 16, 19: 2 GEORGE I. A. D. 1716.†

January 9, 1716.

THE Earl of Wintoun was impeached of high-treason; and the Articles were brought up against him and read the same day in the House of Lords: and it was ordered that the said Earl, with the other impeached lords, should be brought to the bar of the House of Lords the next day, to hear the said Articles read, and to abide such further order as the

* As to various particulars respecting form of proceeding in this Case, see 4 Hats. Prec. and the Journals as referred to by him.

† Upon looking into the books of Adjournal at Edinburgh I find that,

On the 6th September, 1715, Sir James Stuart, solicitor for the king, presented to the Court an order for raising criminal letters against the earl of Seaforth and others, to compear at Edinburgh for the purpose therein mentioned. Warrant to this effect was then signed by the justice clerk.

On the 15th the solicitor represented, that he had obtained letters for citing several persons to appear before their lordships; that he had executed them against the earls of Wintoun and Linlithgow, and Mr. Maule, brother of the earl of Panmure. And he begged that they might be called in virtue thereof, and if they did not appear, that their lordships would proceed against them according to law. They were accordingly called by name at the doors and windows of the Court, and upon their non-appearance, the lords found they had incurred the penalty of single and liferent escheat, to be brought in for his majesty's use. Fined them and each of them in the sum of 500*l.* sterling for his majesty's use, and doomed them to be imprisoned for one year; conform to stat. 2 George 1.

Sept. 16. The same form was gone through as to the viscount Kingston, sir Hugh Paterson of Bannockburn, —— Stirling of Keir, and sir Donald M'Donald; and the same sentence was pronounced upon their not appearing.

Sept. 17. James Malcolm, viscount of Kilsyth, the lords Nairne and Rollo, master Nairne the eldest son of lord Nairne, George Home of Whitfield, —— Grahame of Bucklyvie, and Mr. Seton of Touch, were cited in same manner to appear, and a like sentence was pronounced.

House should think fit to make concerning them.

January 10, 1716.

The earl of Wintoun and the other impeached lords were brought to the bar in the usual form; then the said Articles of Impeachment were read unto them; after which the Lord Chancellor asked them severally what they had to say thereunto, and acquainted them, that if they had any thing to request of the House, this was their proper time.

Thereupon the earl of Wintoun acquainted the House he was unprepared, and very ignorant of the form of their lordships' judicature, and desired he might have a copy of the

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On the same day, sir William Erskine, the lord Lyon, appeared to answer his citation, and was committed to the castle of Edinburgh a prisoner.

Sept. 19. Viscount Strathallan, —— Walkinshaw of Barafield. The lord Drummond, and William Drummond his servant were cited and sentenced.

Sept. 20. Viscount Stormont, sir Patrick Murray of Ochtertyre, and Mr. William Murray of Ochtertyre were cited. Sir P. Murray appeared and was committed to the castle. The rest were sentenced as above.

Sept. 21. Earl of Carnwath, Francis Steuart brother to the earl of Murray, and John Drummond brother to lord Drummond, were cited and sentenced.

Sept. 23. Letters had been issued on 3rd against the viscount Strathallan, —— Lyon of Auchterhouse, —— Balfour of Fairnes and Balfour of Dunboig; the lord advocate represented that these letters had been executed against Balfour of Fairnes and Dunboig, the earl of Nithisdale and viscount of Kenmure. Sentence was then pronounced against them for non-appearance.

Sept. 24. Drummond of Logie, and his brother, were cited and sentenced.

Sept. 26. The earls of Panmure and Southesk, and Mr. Murray, master of Stormont, were cited and sentenced.

Sept. 27. Upon the earl of Bredalbane being called, a Petition for him was presented, stating, that from the infirmities of age he was unable to appear at Edinburgh, where he was cited, as shown per certificate under the hands of John Murray, doctor of medicine in Perth, and Mr. Alexander Convry, minister of the gospel at Kenmure; therefore prays their lordships to continue the diet of his appearance till such day as they shall please, or until he is able to attend.

Sept. 29. —— Lyon of Auchterhouse, and John lord Glenorchy were cited and sentenced.

Upon considering the Petition of the earl of Bredalbane, the lords also find, "that the testificate produced for John earl of Bredalbane not being judicially instructed and proved, is not of itself a sufficient essonzie. And further the same being redargued by an evidence upon oath, proving that the said earl was at a place called Logierate several miles from his own house, where he came to the marquis of Tullibardine and earl of Mar, on the next day by 11 o'clock in the forenoon after the pretended testificate is dated." Therefore for disobedience and contumacy they pronounce sentence against him.

The same day sir Pat. Murray was admitted to bail in virtue of a letter from the king, authorising bail to be accepted.

Sept. 31. Alexander Robertson of Struan, was cited and sentenced.

Oct. 1. Marquis of Huntly, Robert Stewart of Appine, and John Stewart of Ardseal, were cited and sentenced.

Oct. 3. John Cameron younger of Lochiel, was cited and sentenced.

Oct. 4. John Campbell of Auchallader, was cited and sentenced.

Oct. 6. Sir Duncan Campbell of Lochnell, was cited and sentenced.

On the 16th December, Sir D. Campbell presented a Petition, stating that he had arrived in town the evening of the day on which he was summoned to attend, and had immediately waited on the lord justice clerk, but was too late; and for these reasons praying to be reponed. He also presented a letter from the king authorising him to be admitted to bail. The Petition was granted, and the bail received.

Oct. 7. The laird of M'Kinnon, and William M'Kintosh younger of Borlum, cited and sentenced.

Oct. 10. Sir John M'Lean laird of M'Lean, and Allan M'Donald, laird of Clanronald, were cited and sentenced.

Oct. 13. The earls of Marr, Marishale, and Seaforth, lieutenant general George Hamilton, the laird of Glengairy, the laird of Rippoch, Alexander M'Kenzie of Frazerdale, Allan Cameron brother to Lochiel, and William Drummond brother to Logie, were cited and sentenced.

June 4, 1716. Lord Glenorchy presented a letter from his majesty, allowing him to be bailed.

June 6. The earl of Wigton presented a Petition, stating, that he had been committed in virtue of a warrant from major general Whithan, directed to colonel James Stuart, deputy governor of Edinburgh Castle, and dated August 20, 1715. The Petition prayed that he might be set at liberty because the said warrant did not express a cause or reason for the imprisonment, as was shewed by an attested copy thereof, under the hand of major Lindsey.

June 29. The earl of Wigton, who had been committed to prison on the 20th August, 1715, presented a Petition for liberation, stating, that he had been committed in virtue of a warrant from general Prevost, which did not express the cause of his imprisonment. The Petition was granted.

said Articles, and such time to answer as the House should think fit, and that counsel might be assigned to assist him. He was directed to withdraw; and being accordingly withdrawn, the House took his requests into consideration, and thereupon

Ordered, That his lordship should be allowed a copy of the said Articles of Impeachment, and time until Saturday next to put in his Answer thereunto; and that counsel should be assigned him in order to assist him in preparing his Answer, and likewise in his defence in matters of law.

Then his lordship was called in again, and the Lord Chancellor acquainted him with the said order, and that the House expected he should name such counsel as he desired to have.

To which he answered, that nobody was allowed to come to him; he was a stranger and unprepared, and desired to be allowed time to name his counsel.

Then his lordship being again withdrawn,

After some time he was again called in, and the Lord Chancellor, by order of the House, acquainted him, that the House was pleased, besides counsel, to allow him a solicitor, and to give him leave to name whom he desired to come to him this evening, or to-morrow morning, in order to advise him in the naming of counsel and solicitor.

To which purpose the earl of Wintoun named Mr. Hereot, a clergyman, Mr. Menzies, major Sinclair, and Mr. George Lesly, a lawyer.

And then he again withdrew.

And the names of the several persons mentioned by the earl of Wintoun being read to him,

Ordered, That they have leave to repair to the said Earl at any convenient hour, any time before the sitting of the House to-morrow, in order to advise him in the naming of counsel, and a solicitor to assist him in his defence.

Ordered, That the several lords impeached, or any of them, have liberty to cause search to be made, and copies of Records and Journals to be taken out, in order to their defence; and that the said lords shall have summons issued for such witnesses as they shall respectively send in the names of, to be by them made use of at their trials; which witnesses shall have the protection of this House for their safe coming and going, during the time of the said trials.

January 12, 1716.

A petition of George earl of Wintoun was presented to the House and read, praying that he may have some further time for nominating counsel and a solicitor to act for him, and in the mean time to allow his friends formerly named to have access to him; he having caused application to be made to sir Thomas Powis, and Mr. Mead, to have appeared for him, but they both excused themselves.

Ordered, That the same persons before allowed to go to the petitioner, have leave to resort to him at any seasonable time, before eleven o'clock to-morrow in the forenoon, in order to the advising him in naming other counsel, instead of those who have refused.

Whereas by order of this House on Tuesday last, the lords impeached were to put in their respective Answers to the Articles of Impeachment of high-treason exhibited against them by the House of Commons on Saturday last: the House being this day moved at the request of the earl of Derwentwater and lord Widdrington, to grant them further time to put in their Answers to the said Articles of Impeachment: It is ordered, that all the said lords have hereby further time allowed to put in their respective Answers to the said Articles till Monday next at one o'clock.

January 16, 1716.

Whereas by order of this House on Thursday last, the lords impeached were allowed time to put in their Answers till this day to the Articles of Impeachment exhibited against them, the House being this day moved in regard the counsel assigned some of the said lords refused to be concerned for them, that Thursday next may be appointed peremptorily for them to put in their several Answers to the said Articles: It is ordered, that the several lords do peremptorily put in their several Answers to the said Articles on Thursday next at one o'clock; and that the lieutenant of his majesty's Tower of London do bring to this House, on that day, by that time, the said several lords for the purposes aforesaid; and that notice be forthwith given them of this order.

January 19, 1716.

The earl of Wintoun was brought to the bar, by the gentleman-usher of the Black Rod, where he kneeled until the Lord Chancellor directed him to rise, and his lordship acquainted him with the above-mentioned order, and demanded of him if he was ready to put in his Answer.

He said he had a Petition to present to the House: he was an entire stranger to the nature of their lordships' proceedings, and desired his Petition might be read; and the same was read as follows:

To the Right Honourable the Lords Spiritual and Temporal in Parliament assembled; The HUMBLE PETITION of GEORGE Earl of WINTOUN:

Humbly Sheweth,

That on Thursday last I having applied to your lordships, representing how I had caused application to be made to two lawyers, to act as counsel for me, in the Impeachment exhibited before your lordships against me by the honourable House of Commons, and that they both declined to meddle, for reasons then given; your lordships were pleased to allow me some more time for nominating of counsel and solicitors, and this day for giving in my Answers; but by reason of my close confinement, and that your lordships' order for allowing some persons to have access to me, expired on Friday

last at eleven forenoon, I have had no opportunity of naming other counsel and solicitors; nor can I have the assistance of any, till they are appointed by your lordships, and they allowed access to me.

That your petitioner has several specialities and matters of great moment, which he conceives necessary to be a part of his Answer, and which cannot be drawn into form, without the assistance of his counsel and solicitors.

Forasmuch therefore, as this affair is to me of the greatest importance; may it please your lordships to assign sir Constantine Phipps,* and Mr. Peer Williams, to be counsel, and Charles Menzies, and Mr. James Leslie to be my solicitors; and to order that they may have access to me from time to time during my trial; as also that your lordships would be pleased to allow Mr. George Hereot, a minister of the Church of England, to have access to me from time to time, seeing I am confined in a room alone.

And your petitioner shall ever pray, &c.

WINTOUN.

The said earl of Wintoun was directed to withdraw; and being withdrawn accordingly,

The order made on Thursday last upon his petition was read, as also the several orders made on Monday last.

Ordered, That the counsel mentioned in the said petition be assigned him, and that either of the said solicitors be likewise assigned, and that he have time to put in his Answer to the said Articles till Monday next. And that the clergyman mentioned in his petition, being his relation, may have access to him, provided he will stay in custody with him during his confinement.

Then the earl of Wintoun was again called in, and the Lord Chancellor acquainted him, that the House had considered his petition, and assigned him the counsel he desired; and would assign him either of the two solicitors he should chuse; and that the clergyman abovementioned might come to him upon the condition before expressed. Then the said earl of Wintoun naming Mr. Menzies, the House accordingly assigned him for his solicitor, and ordered, that the said counsel and solicitor may have access to him from time to time at all seasonable hours; and he withdrew.

January 21, 1716.

A petition of George earl of Wintoun was presented to the House and read, praying that their lordships would allow him such further time for putting in his Answer, as their lordships shall think fit.

Ordered, That the said petition be rejected.

January 23, 1716.

The earl of Wintoun being brought to the House according to order by the lieutenant of the Tower, the gentleman usher was commanded to bring him to the bar, where he kneeled until he was directed by the Lord Chancellor to rise; and his lordship acquainted him that this was the peremptory day appointed by the House for his putting in his Answer to the Articles of Impeachment exhibited against him by the House of Commons, and asked him if he was ready to put in his Answer.

He thereupon made some excuses, and desired further time for that purpose;

And was directed to withdraw.

Ordered, That the earl of Wintoun be called in, and acquainted, that this House, upon considering his petition on Saturday last, for further time to put in his Answer to the Articles of Impeachment exhibited against him, did reject his said petition; and having indulged him more than any of the lords impeached, are still of opinion (this being the peremptory day for putting in his Answer) to allow him no further time, and that the consequence of his refusing to plead which will ensue in law is, that Judgment will be awarded against him, as if he had pleaded Guilty. Then,

He was accordingly called in, and the Lord Chancellor acquainted him with the said matter.

He thereupon delivered in at the bar his Answer fairly engrossed on parchment, which was read.

January 28, 1716.

The Commons replied to the Answer of the earl of Wintoun.

February 8, 1716.

Ordered, by the Lords spiritual and temporal in parliament assembled, That Thursday the 16th day of this instant February be, and is hereby appointed for the Trial of George earl of Wintoun at the bar of this House in Westminster-hall upon the Impeachment of High Treason exhibited against him by the House of Commons.

February 10, 1716.

Upon reading the petition of George earl of Wintoun, setting forth, That he had a petition in the House on Wednesday last, when their lordships appointed Thursday next for the petitioner's trial, desiring that consideration might be had to the distance of the place, and the season of the year, for bringing up of his witnesses, both men and women, from Scotland and other parts; but the noble peer who promised, and would have moved the said petition, not being present at the time of making the motion for appointing a day of trial, the said petition was not presented in form, which occasioned the appointment of so short a time, wherein it is altogether impossible to prepare any thing in order for the said trial: and praying that this House will grant an order to compel the several witnesses following, (viz.) John Gordon, George Trotter, George Hegg, John Stewart, all servitors to the earl of Wintoun,

* See a note to the Case of Dr. Sacheverell, in the present volume.

—— Beantoun, wife to Mr. David Nicholson in Tranent, Adam Purvis, clerk of the episcopal meeting-house in Tranent, Christopher Seton in Port Seton, lieutenant general —— Wills, —— Forster, esq. —— Miller, esq. capt. Alexander Streton, —— Mackintosh of Bardlim, —— Aenslie, and —— Todd, bailiffs of Musselbrough, and the schoolmaster of Fisherau, to appear before this House at the trial, to give evidence on behalf of the petitioner; and to allow such time for their coming hither, as, in regard to the distance of the place, and the season of the year, and the importance of the affair, their lordships in their great wisdom and justice shall think reasonable: It is ordered, That the time appointed for the trial of the petitioner in Westminster-hall be, and is hereby, enlarged to Thursday the eighth day of March next: and that the several persons afore-named be, and are hereby, required to attend this House on Thursday the said eighth day of March, as witnesses on behalf of the petitioner, except such of the said persons as are now prisoners for high treason; and that they shall have the protection of this House for their safe coming and going, during the time of the said trial.

March 5, 1716.

Upon reading the petition of George earl of Wintoun, setting forth, that his agents have used all diligence possible in serving the order of this House for the attendance of his witnesses; and now they are all on their way hither, part by sea and part by land: And that the nature of his defence is such, that if the witnesses were arrived, as none of them are, the time would be too short to prepare his briefs, and instruct his counsel; and praying that the time appointed for his said trial may be enlarged for such time as their lordships, in their great justice and wisdom, shall think proper, in a case of so great consequence: It is ordered, that the time appointed for the petitioner's trial be, and is hereby, enlarged, till Thursday the 15th day of this instant March at ten of the clock in the forenoon.

March 12, 1716.

A petition of George earl of Wintoun was presented to the House and read, setting forth, that his agents have used all possible diligence in getting his witnesses hither, and several of them are lately arrived, but four of the most material of them, though they all be on their way hither, are not yet come up, some of them being lame and others very infirm, so that they are not able to travel so quickly; and praying, that the time appointed for his trial may be enlarged for such time as their lordships, in their great justice and wisdom, shall think proper, in a case of so great concern.

And after debate thereupon, and reading the orders made in relation to the said trial, Charles Menzies, the petitioner's solicitor, was called in, and examined upon oath at the bar, touching the allegations of the said petition; and failing to make good the same; And being withdrawn,

It was moved to reject the petition.

And the question being put whether the said petition shall be rejected, it was resolved in the affirmative.

March 13, 1716.

Several orders were made for preserving the peace, and touching the course of proceeding, to and at the ensuing trial; and among them,

Ordered, that the counsel assigned the said earl of Wintoun may be present when he is at the bar, in order to be heard touching any point or matter of law, if any such shall arise.

March 14, 1716.

Upon reading the petition of George earl of Wintoun, praying that this House will be pleased to assign and add Mr. Kettelby and Dr. Strahan to his counsel formerly named, and that they may have access to him during his confinement: It is ordered, that the counsel above-mentioned be assigned the petitioner, to be heard to matters of law, but not to matters of fact,* so as not to put off the petitioner's trial, and that they, or either of them, have access to the petitioner from time to time, at all seasonable times.

A motion being made, that the following persons, whose names were contained in a list exhibited at the same time, on behalf of the earl of Wintoun, might be summoned as witnesses for the said earl at his trial; being then, as alleged, in or near the city of London.

Ordered, by the Lords spiritual and temporal in parliament assembled, that John Gordon of Kirkhill, Alexander Nisbet writer in Edinburgh, William Knox, Thomas Bain, John Wattesone, all three of Seaton, Mrs. Magdalen Corsbie of Canongate, Agnes Duncan of Seaton, Dr. Lidderdale, a physician, doctor Cockburne a divine, Dr. John Inglis, major Sinclaire, George Trotter, and George Hogg of Seaton, be and are hereby required to attend this House in Westminster-hall, to morrow at ten of the clock in the forenoon, in order to be examined as witnesses on the behalf of George earl of Wintoun at his trial.

The House being informed that the earl of Wintoun desired that general Carpenter might be examined as a witness at his trial:

The said general Carpenter being a member of the House of Commons:

A Message was sent to that House by Mr. Holford and Mr. Lovibond, to acquaint them, that the Lords do desire that they will give leave to the said general Carpenter to be examined at the said Earl's trial.

Ordered, that the witnesses which shall be produced by the earl of Wintoun to be examined in his defence, shall be examined upon oath, which oath to be administered to the wit-

* The stat. 7 W. 3, s. 1, did not allow the assistance of counsel as to matters of fact in impeachments for treason, but the stat. 20 G. 2, c. 30, has extended it to such cases.

nesses on both sides at the said trial shall be this: 'The evidence which you shall give in 'this trial, concerning George earl of Wintoun, 'prisoner at the bar, shall be the truth, the 'whole truth, and nothing but the truth.—So 'help you God, and the contents of this book.'

March 15, 1716.

The messenger sent yesterday to the House of Commons, return Answer, that the Commons have given leave to general Carpenter to be examined as a witness at the Trial of George earl of Wintoun.

The House was then adjourned to Westminster-hall.

THE FIRST DAY.

Begun in Westminster-Hall on Thursday, March 15, 1716.

About one of the clock, the Lords came from their own House into the Court erected in Westminster-hall, in the manner following.

The lord high steward's gentlemen attendants, two and two.

The clerks assistant to the House of Lords, and the clerk of the parliament, with the clerk of the crown in the court of Chancery; the clerk of the parliament bearing the king's commission to the lord high steward.

The masters in Chancery, two and two.

Then the judges.

The Peers eldest sons, and Peers minors, two and two.

Four serjeants at arms with their maces, two and two.

The yeomen ushers of the House.

Then the Peers, two and two, beginning with the youngest barons.

Then four serjeants at arms with their maces.

The serjeant at arms attending the great-seal, and purse-bearer.

Then Garter king at arms; and the gentleman-usher of the Black Rod, carrying the white staff before the lord high-steward.

The lord high-steward (William lord Cowper) alone, his train borne.

When the Lords were placed in their proper seats, and the lord high-steward upon the wool-pack,

The clerk of the crown, in the court of Chancery, standing before the clerk's table with his face towards the state, having his majesty's commission to the lord high-steward in his hand, made three reverences towards the lord high-steward; and, on his knee, presented the commission to the lord high-steward; after which, and usual reverences, the same was carried down to the table: and then proclamation for silence was made in this manner.

O Yes, O Yes, O Yes! Our sovereign lord the king strictly charges and commands all manner of persons to keep silence, upon pain of imprisonment.

Then the lord high-steward stood up, and spoke to the Peers.

Lord High-Steward. His majesty's commission is going to be read; your lordships are desired to attend.

All the Peers uncovered themselves, and they and all others stood up uncovered while the commission was reading.

"GEORGIUS *R.*

"Georgius, Dei Gratia, Magnæ Britanniæ, Franciæ et Hiberniæ Rex, Fidei Defensor, &c. Prædilecto et Fideli Consiliario nostro Willielmo Domino Cowper, Cancellario nostro Magnæ Britanniæ, Salutem, Cum Georgius Comes de Winton, cum aliis, coram Nobis in præsenti Parliamento, per Milites, Cives et Burgenses in Parliamento nostro Assemblat' de alta Proditione per ipsum Georgium Comitem de Winton, et al' commiss' et perpetrat' in nomine ipsorum Militum, Civium et Burgensium, et nomine omnium Communium Regni nostri Magnæ Britanniæ impetit' et accusat' existit. Nos considerantes quod Justitia est Virtus excellens et Altissimo complacens, Volentesque quod prædict' Georgius Comes de Winton, de et pro Proditione unde ipse ut præfertur impetit' et accusat' existit coram Nobis in præsenti Parliamento nostro, secundum Leg' et Consuetudinem hujus Regni nostri Magnæ Britanniæ, et secundum Consuetudinem Parliamenti audiatur, sententietur et adjudicetur, cæterasque omnia quæ in hac parte pertinent debito modo exerceantur et exequantur, ac pro eo quod Proceres et Magnates in præsenti Parliamento nostro assemblat' Nobis humillime supplicaverunt ut Senescallum Magnæ Britanniæ pro hac vice constituere dignaremur. Nos de fidelitate, prudentia, provida circumspectione, et industria vestris plurimum confidentes, Ordinavimus et Constituimus vos ex hac Causa Senescallum Magnæ Britanniæ ad Officium illud, cum omnibus eidem Officio in hac parte debit' et pertinen' (hac vice) gerend' occupand' et exercend'. Et ideo vobis Mandamus quod circa præmissa diligentur intendatis, et omnia quæ in hac parte ad Officium Senescalli Magnæ Britanniæ pertinent et requiruntur hac vice faciatis, exerceatis, et exequamini cum effectu. In cujus rei Testimonium has Literas nostras fieri fecimus Patentes, Teste meipso apud Westm' Decimo Quinto Die. Per ipsum Regem propria Manu Signat' WRIGHTE."

Serjeant at Arms. God save the King.

Then the herald and gentleman usher of the Black Rod, after three reverences, kneeling, presented the white staff to his grace; and then his grace, attended by the herald, Black Rod and seal bearer (making his proper reverences towards the throne) removed from the wool-pack to an armed chair, which was placed on the uppermost step but one of the throne, as it was prepared for that purpose, and then seated himself in the chair, and delivered the staff to the gentleman usher of the Black Rod on his right hand, the seal-bearer holding the purse on the left.

Clerk of the Crown. Serjeant at Arms, make proclamation.

Serjeant at Arms. O Yes, O Yes, O Yes!

Our sovereign lord the king strictly charges and commands all manner of persons to keep silence, upon pain of imprisonment.

Then another proclamation was made as follows.

O Yes, O Yes, O Yes! Lieutenant of the Tower of London, bring forth your prisoner to the bar, according to the order of the House of Lords to you directed.

Then George earl of Wintoun was brought to the bar by the deputy governor of the Tower, having the axe carried before him by the gentleman jailor, who stood with it on the left hand of the prisoner, with the edge turned from him. The prisoner when he approached the bar (after kneeling) bowed to his grace the lord high steward, and to the House of Peers; which compliment was returned him by his grace, and the House of Peers.

And proclamation being again made for keeping silence,

The *L. H. Steward* spake to the prisoner as follows:

George earl of Wintoun, you are brought to the bar of this august judicature, in order to a fair and impartial Trial, on the Impeachment of High Treason exhibited against you by the Commons of Great Britain in parliament assembled; to which you have answered, and pleaded Not Guilty: thereupon the Commons have replied, and undertaken to prove you guilty of the High Treason whereof you stand impeached.

Under this heavy charge (of which your lordship has long since had a copy, and which you will now hear read again) nothing can be a greater support to your mind (especially if not conscious of guilt) than to consider, that you are about to be tried by your peers; not any select number of them, but by their whole body assembled in parliament, and indifferently summoned to attend this Trial.

Hence your lordship may be assured, that justice will be administered to you, attended not only with that common degree of compassion which humanity itself derives to persons in your condition, but also with that extraordinary concern for you, which naturally flows from a parity of circumstances common to yourself, and to them who judge you, (those bonds, the weighty accusation laid upon you, with its consequences, almost only excepted.)

On the other hand, you must not hope, that if you shall be clearly proved guilty, their lordships, being under the strongest obligation to do right that can be laid on noble minds, I mean that of their honour, will not break through all the difficulties unmerited pity may put in their way, to do perfect justice upon you, however miserable that must render your condition.

Your lordship will not be interrupted while you are making your Defence in a proper manner; and therefore you will also attend with patience to what shall be said by the managers of the House of Commons, or given in evidence against you.

When any of the witnesses produced against you by the gentlemen of the House of Commons are thoroughly examined by them, your lordship will have liberty to cross-examine every witness before another is called.

But the counsel assigned you are not to cross-examine any witnesses, nor to give you any assistance public or private, while matter of fact only is in question; but if any matter of law arise during the course of your Trial, they may speak to it in your lordship's behalf: and to that end they are permitted to be within hearing, that they may be the more ready and able to serve your lordship on such occasion.

Your lordship is the first that on an impeachment for high treason will have had the benefit of a good law made in the first year of the late queen (since the Revolution;) whereby in all trials for high-treason, as well as other capital offences mentioned in the act, the witnesses produced on the part of the prisoner are to be examined on their oaths: so that your witnesses will become entitled, in respect of the obligation under which they give their testimony, to the same degree of credit as the witnesses produced against you will be.

I take it for granted, that if your lordship desires it, you will be allowed the use of pen, ink, and paper, to take notes in order to your defence: and I doubt not but if during the Trial you are observed to omit any just advantage which the law allows you, I shall not only be excused, but approved, if I put you in mind of it.

I am also commanded to acquaint your lordship, that when you have occasion to speak, you are to address yourself to the Lords in general, and not to any lord in particular; as all others who shall have occasion to speak in this Trial will likewise take notice they are to do.

The lord high steward having done, commanded the Articles of Impeachment, and the earl of Wintoun's Answer thereunto, as also the Replication of the Commons to the said Answer, to be read; and the same were read accordingly, as follows:

Articles of Impeachment of High Treason exhibited against James Earl of Derwentwater, William Lord Widdrington, William Earl of Nithisdale, George Earl of Wintoun, Robert Earl of Carnwath, William Viscount Kenmure, and William Lord Nairn.

Whereas for many years last a most wicked design and contrivance has been formed and carried on, to subvert the ancient and established government, and the good laws of these kingdoms, to extirpate the true Protestant religion therein established, and to destroy its professors; and instead thereof, to introduce and settle Popery and arbitrary power; in which unnatural and horrid conspiracy great numbers

of persons of different degrees and qualities have concerned themselves and acted; and many Protestants, pretending an uncommon zeal for the Church of England, have joined themselves with professed Papists, uniting their endeavours to accomplish and execute the aforesaid wicked and traitorous designs.

And whereas it pleased Almighty God in his good Providence, and in his great mercy and goodness to these nations, to crown the unwearied endeavours of his late majesty king William the third of ever glorious memory, by making him the instrument to procure the settlement of the crown of these realms in the illustrious House of Hanover, as the only means under God to preserve our religion, laws and liberties, and to secure the Protestant interest of Europe; since which happy establishment the said conspirators have been indefatigable in their endeavours to destroy the same, and to make way for the vain and groundless hopes of a spurious impostor and Popish Pretender to the imperial crown of these realms.

And to accomplish these ends, the most immoral, irreligious and unchristian-like methods have been taken, but more particularly in the last years of the reign of the late queen Anne, during which time all imaginable endeavours were used by the said conspirators to prejudice the minds of the subjects of this realm against the legality and justice of the said settlement of the crown: and for that purpose the Holy Scriptures were wrested, and the most wholesome doctrines of the Church of England perverted and abused by men in holy orders,* in the most public and scandalous manner, in order to condemn the justice of the late happy Revolution; and thereby to sap and undermine the foundation of the said happy establishment; and the most notorious instruments of these wicked purposes were countenanced by particular marks of public favour and distinction; false and dangerous notions of a sole hereditary right to the imperial crown of these realms were propagated and encouraged by persons in the highest trust and employments, contrary to the ancient undoubted and established laws of these kingdoms; jesuitical and scandalous distinctions were invented and publicly inculcated, to enervate the force and obligation of those oaths which had been contrived in the plainest and strongest terms by the wisdom of parliament for the security of the said establishment; and to conceal their designs, and thereby the better to enable them to carry on the same, great numbers of the said conspirators of all ranks and conditions, pretending a zeal for the Protestant Succession, openly and voluntarily took the said oaths; groundless fears of the danger of the Church of England were fomented throughout these kingdoms, to disorder the minds of well-disposed Protestants.

By all which, and many other such ungodly practices of the said conspirators, the most causeless and dangerous jealousies and dissatisfactions were created in the minds of the good people of this kingdom, and great numbers of well-meaning, but deluded Protestants were much disquieted.

But nevertheless these dishonest methods were pursued by the said conspirators with indefatigable industry, as the only means to weaken the foundations of the said happy establishment.

And whereas the dissolution of the late glorious confederacy against France, and the loss of the balance of power in Europe, were further steps necessary to complete the designs of the said conspirators; and the same being effected by the late ignominious peace with France, the French king was rendered formidable, and the Protestant Succession was thereby brought into the most imminent danger; and by these and other pernicious measures, the destruction, so long intended by the said conspirators, for these poor nations, seemed near at hand.

At which time, and under which most deplorable circumstances, it pleased Almighty God in his infinite wisdom to call to himself the late queen Anne, and by a concurrence of many most wonderful providences to give a quiet and peaceable accession to his present most gracious majesty to the throne of his ancestors, to which he was received with one full voice and consent of tongue and heart, and the united joy of every good subject and good Protestant, as their only lawful and rightful liege lord; and although from the moment his majesty ascended the throne to this day, his reign has been one series of wisdom, justice and clemency; his labours constant, unwearied and successful to retrieve the honour and reputation of these nations; to re-establish the trade and recover the wealth of his kingdoms; and although all imaginable encouragement has been given to the Church of England, and all tenderness shewn even to his Popish subjects, and his constant care has been to procure the universal good of his people; nevertheless the said conspirators have, by the most vile and impious methods, renewed their endeavours to throw these kingdoms into the utmost confusion, and to entail endless miseries on us and our posterities: For these ends many of the above-mentioned most wicked and dangerous practices have been repeated with the utmost industry and inveteracy, to delude, disorder and corrupt the minds of his majesty's good subjects; the most groundless jealousies have been fomented against his wise and happy administration, and in many parts of his kingdoms the most unnatural, unexampled riots and tumults, by the secret and malicious endeavours of the said conspirators, have been procured, stirred up, and encouraged against his peaceable Protestant subjects, under false pretences of zeal for the Church of England, and thereby more effectually to delude his good subjects, and seduce them from their allegiance, and prepare them for an open rebellion.

* See the case of Sacheverell, in the present volume, p. 1.

And the said conspirators having at length resolved to deprive these nations of the invaluable blessings which they now enjoy under the wise and gentle reign of his present most gracious majesty king George, and of the certain prospect of happiness which they have for their prosperity, in a succession of princes derived from himself; did contrive, confederate, and resolve to put their most malicious, wicked, and traitorous designs into immediate execution; for which purpose, James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, and William lord Nairn, together with Thomas Forster, jun. the lord Charles Murray, Edward Howard, Thomas Errington, John Clavering, William Shaftoe, sir Francis Anderton, Ralph Standish, Richard Townly, Thomas Butler, Thomas Walton, Gabriel Hasket, Richard Gascoigne, and divers other persons, as false traitors to his present most sacred majesty king George, the only lawful and undoubted sovereign of these kingdoms, having withdrawn their allegiance, and cordial love, and true and due obedience, which they as good and faithful subjects owed to his said majesty, did, in or about the months of September, October, or November, 1715, most wickedly, maliciously, falsely and traitorously imagine and compass the death of his said most sacred majesty.

And for the accomplishing and executing their said traitorous purpose, they the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, and William lord Nairn, did in or about the said months, or some of them, and at divers other times, and in divers places within this kingdom, wickedly and traitorously agree, confederate, conspire, and resolve, together with many other evil-disposed persons, to raise, excite, and levy within the counties of Teviotdale, Northumberland, Cumberland, and the county palatine of Lancaster, and elsewhere within this kingdom, a most cruel, bloody and destructive war against his majesty, in order to depose and murder his sacred majesty, and to deprive him of his royal state, crown and dignity.

And the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, William lord Nairn, their accomplices and confederates, in or about the months aforesaid, in the counties aforesaid, or some of them, did gather together great numbers of his majesty's subjects, and with them did assemble in a warlike and traitorous manner, in order to raise tumults and rebellion within this kingdom; and having procured great quantities of arms, ammunition and warlike instruments, at the times and places aforesaid, or some of them, did form and compose, or did assist in the forming and composing an army of men, consisting of his majesty's liege subjects, in order to wage war against his said majesty, for and in behalf, and in favour of the said Pretender to the crown of these realms; and the said last-mentioned conspirators, their accomplices and confederates, at the time and times and places aforesaid; and at divers other times and places within this kingdom, did maliciously and traitorously make, levy, and raise war and rebellion against his most sacred majesty; and in a warlike and hostile manner did march through and invade several parts of this kingdom; and did unlawfully take and seize the horses and other the goods and chattels of many of the peaceable and good subjects of his majesty, and in other places did take and seize from his majesty's faithful subjects, guns, and other warlike instruments, for their carrying on their traitorous purposes.

And the said last-mentioned conspirators, their complices and confederates, during their march and invasion aforesaid, in open defiance of his most sacred majesty's just and undoubted title to the imperial crown of these realms, did wickedly and traitorously cause and procure the said Pretender to be proclaimed in the most public and solemn manner, as king of these realms; and in several places in the counties aforesaid, or some of them, did unlawfully take and seize from his majesty's officers of the revenue the public money, for the use and service of the said Pretender; and though many of the conspirators are avowed professors of the Popish religion, yet the more effectually to cover and disguise their most wicked and traitorous designs, and to delude his majesty's subjects, they did prevail on and secure several men in holy orders, ministers of the Church of England, and who had before that time abjured the said Pretender, to accompany, countenance and abet the said most traitorous enterprize; and in several places in the counties aforesaid, where the said conspirators, their complices and confederates then were, to pray for the said Pretender in the public churches, as king of these realms.

That the said last-mentioned conspirators, their accomplices and confederates, did, on or about the ninth, tenth, eleventh, twelfth, or thirteenth of November aforesaid, traitorously seize and possess themselves of the town of Preston in the county Palatine of Lancaster against his majesty, and did then and there in a warlike and hostile manner levy war, oppose, engage, and fight against his majesty's forces; and did then and there cause and procure a miserable and horrid slaughter and murder of many of his majesty's faithful subjects.

All which treasons and crimes above-mentioned were contrived, committed, perpetrated, acted and done, by the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, William lord Nairn, and other the conspirators aforesaid, against our sovereign

lord the king, his crown and dignity; and contrary to the duty of their allegiance, and against the laws and statutes of this kingdom.

Of all which treasons and crimes, the knights citizens and burgesses in parliament assembled, do, in the name of themselves and of all the Commons of Great Britain, impeach the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, William lord Nairn, and every of them.

And the said Commons by protestation saving to themselves the liberty of exhibiting at any time hereafter any other accusations or impeachments against the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmore, and William lord Nairn, or any of them; and also of replying to the Answers which the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, and William lord Nairn, or any of them, shall make to the premisses, or any of them, or to any impeachment or accusation that shall be by them exhibited according to the course and proceedings of parliament; and do pray, that the said James earl of Derwentwater, William lord Widdrington, William earl of Nithisdale, George earl of Wintoun, Robert earl of Carnwath, William viscount Kenmure, and William lord Nairn, be put to answer all and every the premisses: And that such proceedings, examinations, trials, and judgments may be upon them and every of them had and used as shall be agreeable to law and justice.

The Answer of George Earl of Wintoun, to the Articles of Impeachment exhibited against him by the Honourable House of Commons, for High Treason, and other High Crimes and Misdemeanors.

The said Earl saving to himself all benefit of exception to the incertainties and insufficiencies, in the said Articles of Impeachment contained, and also all advantages and privileges belonging to him as a peer of Great Britain, for answer to the said Articles says, That he cannot but esteem it the greatest addition to his afflictions, to fall under the displeasure of the honourable House of Commons. Yet as his innocence under these misfortunes is his support, so he hopes it will be his security. He being taken with persons that were in arms against the government, might reasonably be presumed to be equally guilty, and to be justly joined with them in the same impeachment; but when it shall appear how much the circumstances of his case differ from others, he 'does not doubt but your lordships' great justice will distinguish him in judgment; and that it will be as pleasing to that honourable body, who are his accusers, to have an innocent man acquitted, as one that is guilty condemned. He begs leave to take notice, that he is descended from a very ancient, noble family, in whose blood the streams of loyalty were always pure, never corrupted or polluted with treason or sedition; and he never degenerated so much from his loyal ancestors, as to form or carry on any design to subvert or alter the constitution of these kingdoms, but for the preservation of it was upon all occasions ready to sacrifice his fortune, and even his life: He was so cautious to avoid giving occasion to be suspected by the government, that about eight years ago, upon his return from his travels, he withdrew from all conversation, and confined himself to his house, never corresponded by letter with any person whatsoever; yet to his great misfortune, he could not be quiet or safe in his closest retirement; for many persons, both officers and others of the militia of the shire of Lothian, under the specious pretence of serving the government, but in reality actuated by private pique and revenge, several times, contrary to law, forcibly entered by night into his dwelling-house, called Seaton palace, rifled it, turned his servants out of doors, and carried away the provisions of his family. The most sacred places did not escape their fury and resentment, they broke into his chapel, defaced the monuments of his ancestors, took up the stones of their sepulchres, thrust irons through their bodies, and treated them in a most barbarous, inhuman and unchristian-like manner; cannon and mortars were brought to demolish his house, and several troops of dragoons having gotten the possession thereof, some of them kept guard there, and when they left it, many of the militia entered, and kept possession thereof till they were driven from thence by the highlanders, by whom he was likewise very ill-treated, he being the only person that was plundered by them. By these and many other severities, the said Earl was forced to leave his house, and seek for shelter among his tenants and neighbours, where he was pursued from house to house, and at last very unfortunately driven into the company of some of the gentlemen named in the Impeachment. He presumes to affirm to your lordships, that he did not join them with a traitorous, or rebellious design, but only with an intention to preserve himself from being insulted and assassinated; for he had been once before taken up without any warrant or authority, and having got from the persons in whose custody he was, they threatened, if they could retake him, to murder him; and had before imbrued their hands in the blood of the son of a neighbouring gentleman. He never intended to have left his own country; and when some gentlemen mentioned coming into England, he opposed it; he was far from assisting or encouraging them in their undertakings; he was not admitted

into their secrets, nor informed of their designs, and was so much a stranger to their proceedings, that when they marched towards Northumberland, he was told they were going along the skirts of the hills in Scotland to avoid general Carpenter; but afterwards discovered they were in England when it was too late, and to return alone into Scotland was too hazardous, which he did not attempt, because he had reason to believe they would soon go back to Scotland.

Although he was constrained to keep the other lords and gentlemen company, yet he never joined with them in any act of hostility, nor assisted in taking any of the public money, or in seizing any guns or other warlike instruments, or countenanced or abetted them therein. He did not at Preston or elsewhere fire a pistol, offer violence to any person whatsoever, or in any other manner fight against, or resist his majesty's forces, but with the rest surrendered himself to general Wills. The honour of a peer is more valuable than life itself, and therefore he ought to be so much the more cautious that it be not stained with the least imputation of guilt. The said Earl knows his innocence, and hopes your lordships will excuse him, if in justice to himself, and for the preservation of his honour, he does not take upon him the guilt of crimes, the very thoughts of which were always strangers to his breast: and therefore, in answer to the Impeachment, he says, that he is Not Guilty of the treason and other the crimes and misdemeanors mentioned in the said Articles, or any of them, in manner and form as is therein alleged; and for his trial puts himself on your lordships, who are his peers, and begs your lordships to believe that his Answer proceeds from the sense he has of the truth of it, and not from obstinacy or any inclination to give your lordships and the honourable House of Commons any unnecessary trouble, or from the least doubt or mistrust of his majesty's clemency. But if upon his trial it shall appear, that he hath committed any act which in the rigour of the law may be construed to amount to the crime of high-treason, he hopes the innocence of his heart, and his ignorance in the law will, by the power of your lordships' intercession, render him an object of his majesty's mercy, which he and the rest at the time of surrendering themselves were encouraged by his majesty's officers to depend upon. The said Earl submits his case thus circumstanced to your lordships' great wisdom and judgment, and humbly prays your lordships' favourable interpretation thereof, not doubting but to make his innocence appear to your lordships' satisfaction. WINTOUN.

THE REPLY OF THE HOUSE OF COMMONS TO THE ANSWER OF GEORGE EARL OF WINTOUN.

A Message was brought from the House of Commons by Mr. Hampden and others, to acquaint this House, that they have considered the Answer of George earl of Wintoun to the Impeachment exhibited against him by the knights, citizens, and burgesses assembled in parliament, and do aver their Charge against the said George earl of Wintoun for high-treason to be true, and that the said earl of Wintoun is Guilty of the high-treason in such manner as he stands impeached; and that the Commons will be ready to prove their Charge against him at such convenient time as shall be appointed for that purpose.

Lord High Steward. The distance of this place from the bar is so very great, that I am obliged to ask your lordships' leave that I come down to the table.

Lords. Ay, ay.

Which being done accordingly,

The *Lord High Steward* said, Gentlemen of the House of Commons, you will be pleased now to proceed.

Mr. *Hampden.* My lords, we appear in this place in behalf of all the Commons of Great-Britain, to make good the Impeachment of high-treason against the prisoner at the bar George earl of Wintoun.

The Commons in parliament assembled being justly alarmed with the dangers to which this nation has been exposed by the late unnatural rebellion, have found it incumbent on them to enquire into the authors and promoters of so fatal and pernicious an attempt, which was no less than to deprive these nations of the invaluable blessings which they enjoy under the wise and gentle reign of his most sacred majesty king George.

The indispensable duty which the Commons owe to his majesty, and to those they represent, engage them to appear in the cause of their country, by examining into the rise and progress of the said late traitorous enterprize, contrived and carried on with an intent to depose and murder his said majesty, and to set up a Popish Pretender to the crown of these realms, and in consequence, to change the constitution of this nation, and to introduce a slavish and arbitrary government.

The earl of Wintoun appearing to the Commons to have been deeply engaged in the late rebellion, their zeal and affection, and their concern for the safety of the nation, and the Protestant Succession, and the liberties of the people, have rendered it necessary for them to bring to your lordships' bar this offender, against whom they have, in the name of themselves, and of all the Commons of Great-Britain, exhibited Articles of Impeachment of high-treason, setting forth and charging,

That the earl of Wintoun (with his associates named in the Articles and divers others), contrary to his allegiance, did traitorously conspire and imagine the death of his most sacred majesty; and in aid of such treason, did in the months of September, October, or November 1715, resolve to levy in several parts of Scot-

land and England a most destructive war against his majesty.

That his lordship, with other his confederates, did assemble in a warlike manner, and procured arms, ammunition, and warlike instruments, and did compose an army to wage war against his majesty, and did march through and invade several parts of this kingdom, and unlawfully seized his majesty's treasure for the service of the Pretender, and took away the horses and other goods of many of his majesty's peaceable subjects.

And that during the said march and invasion, the earl of Wintoun, with other rebels, did, in open defiance of his majesty's undoubted title to the crown of these realms, frequently cause the Pretender to be proclaimed in a public and solemn manner as king of these realms.

That the more effectually to disguise these wicked intentions, and to delude his majesty's subjects, the said Earl, with other rebels, did prevail on several ministers of the Church of England, and who had abjured the Pretender, to pray for the Pretender in several public churches as king of these realms.

And that the said Earl, his associates, and accomplices, did in November last, traitorously possess themselves of the town of Preston, in the county-palatine of Lancaster, and did levy war and fight against his majesty's forces, and procured a miserable slaughter and murder of many of his majesty's good and faithful subjects.

My lords, the earl of Wintoun has, in his Plea to the said Impeachment, thought fit to deny part of this great and heavy charge; and in answer to other parts of it, he suggests to your lordships to the effect following:

That being taken with persons that were in arms against the government, he might be presumed to be equally guilty with them; but that when your lordships shall consider the circumstances of his case, he doubts not of finding a distinction from others in your judgment.

He acquaints your lordships with the loyalty of his ancestors, from whose character, he says, he is not so much degenerated, as to form or carry on a design against the constitution of these kingdoms.

That to avoid being suspected by the government, he withdrew himself some years ago from all conversation, and retired to his own house; but that several of the militia of the shire of Lothian, under pretence of serving the government, did, contrary to law, forcibly enter his lordship's house, which they rifled, and committed several other disorders there.

That afterwards cannon and mortars were brought to demolish his house, and several troops of dragoons took possession of it; and upon their leaving it, the militia came and kept possession of his house till they were driven thence by the highlanders, by whom he was also very ill treated.

That by these severities, and afterwards not being suffered to live quietly among his tenants, where he had retired for shelter, he was driven into the company of some of the gentlemen named in the Impeachment; but affirms to your lordships, that it was with an intent to preserve himself from being assassinated.

That he opposed the proposition of coming into England, and was not acquainted with the designs of the other gentlemen with him; and was surprized when he found himself in England, but declined going back, because he believed they would soon return to Scotland.

That he did not assist in taking any of the public money, or in seizing any warlike instruments.

That he did not at Preston, or elsewhere, fire a pistol, offer violence to any person, or fight against his majesty's forces, but surrendered himself to the king's general.

And as an inducement for such surrender, his lordship says, that he, and the rest with him, were at that time encouraged by his majesty's officers to depend on his majesty's mercy.

My lords, notwithstanding what is contained in the earl of Wintoun's Plea to the Impeachment of the Commons, and the specious explanation which his lordship has given to such proceedings of his, as were a foundation to the Commons to include his lordship in the Articles against the other lords mentioned therein; we make no question but we shall shew the fallacy and insufficiency of the said Plea to our Charge against him, and make it appear, that no less is contained in our accusation against his lordship, than what the law in every man's breast, the light of nature, and the rules of society, disapprove of and condemn.

We shall in the course of our evidence prove to your lordships, that the earl of Wintoun joined early with the rebels in Scotland in the beginning of this enterprize; and that the disorders mentioned in his Plea to have been committed at his house, and which he alleges as the ground of his leaving it, and seeking shelter among the rebels, were not the true cause of his joining them, since his lordship had left his house before the highlanders came to it.

This noble peer was too great a person to act an ordinary part in this rebellion. He openly engaged in it, and not only appeared in person, but led on, and encouraged his associates in it; some of which, through the blessing of God on his majesty's arms, are now in the hands of justice, and others have suffered for the same treason.

We shall prove to your lordships, that the earl of Wintoun formed a troop of horse, which he maintained at his own charge.

That he afterwards commanded a squadron of horse, and that he continued his command thereof in the several marches to Preston, and until the surrender of that place to the king's forces.

That during the several marches of the re-

bels, the earl of Wintoun was with them on horseback, armed with a sword and a case of pistols; and that he never shewed any uneasiness, but always appeared as forward as any one; and that at the action at Preston his lordship was assisting, and very active among the rebels.

That at several places in Scotland and England, his lordship, and other rebels, caused the Pretender to be proclaimed king of these realms, and that his lordship was present at such proclamations.

That his lordship and other rebels, did in several places cause his majesty's treasure to be seized, for the service of the Pretender; and did in several places prevail on ministers of the Church of England, and who had abjured the Pretender, to pray for him in the public churches, as king of these realms.

That when the rebels surrendered themselves at Preston to the king's forces, they were far from receiving any assurances of mercy from his majesty's officers; but were acquainted by the said officers, that his lordship and others taken with him, had no reason to expect mercy, since they were taken in open rebellion against his majesty.

My lords, the Commons, who are ever vigilant for the safety of his majesty, and for the preservation of the liberties of the people, cannot answer it to God or their country, if they should neglect to exert themselves, in bringing to exemplary justice the open and declared instruments of this rebellion; and it is a satisfaction to the Commons, that in the course of their interposition, to rescue the nation from the fatal consequences of the late unprovoked rebellion, whatever misrepresentations other prosecutions may have been formerly liable to, the notoriety of this rebellion has been so evident, that the most malicious of our enemies want confidence to deny it.

We are not surprised, that Papists should be engaged in this rebellion, though the most unnatural and unexampled in its circumstances, by being void of the least pretext of provocation, since they maintain it lawful to kill a heretic king, and such they term his present majesty, and it is declared by them, that such a piece of service is not only lawful, but pious, and agreeable to God.

But how Protestants could be possessed with such a spirit of infatuation, and to such a degree be deluded, as to believe the most secure and effectual way to protect the Church, was to have recourse to a Popish prince, to rescue it from the danger they imagined it liable to, from the Protestant Succession taking place: and how it could enter into the hearts of Protestants to be fired with such an ill-directed zeal, as to act in conjunction with avowed enemies of their religion and liberties, is not to be accounted for; unless such unnatural and destructive attempts are some of the necessary consequences of the late mal-administration.

No less was to be the sacrifice, than of his majesty and his royal family, (a succession of princes appointed by Divine Providence to be the guardians of the Protestant interest in Europe) and of our present happy constitution, to appease the fury of Papists and Protestants associated in this rebellion, and who envied us the blessings we enjoyed by the uninterrupted exercise of our religious and civil rights and privileges.

Had this rebellion taken place, this nation, the glory of the Reformation, the most substantial bulwark against Popery, and that had at the happy Revolution, under the influences of king William the third, of immortal memory, triumphed over the arbitrary designs of our enemies to subvert our constitution, was to fall a victim to bigotry, superstition and slavery, the pernicious and necessary consequence of introducing a religion, void of natural sense and natural conscience.

If an attempt to subvert the government, to destroy the king, and set up a Popish Pretender: if marching in an hostile manner; if carrying on a destructive war in the bowels of the nation, are only acts of surprise and inadvertency, any rebellion may be palliated over and excused; since scarce any circumstances can be added in aggravation of that, which has lately been raised and carried in this kingdom.

My lords, I have acquainted your lordships with the necessary occasion of this prosecution: I have endeavoured in the most impartial manner to discharge the trust reposed in me, by opening the nature of the Charge against the Earl at the bar. I have likewise stated to your lordships the substance of his Plea to the Impeachment of the Commons. I have given your lordships a general view of the evidence which we shall produce to make good our Charge, and to shew the invalidity of the said Plea; and from the malignity of the late rebellious and traitorous enterprize, and its fatal tendency, I have represented the necessity the Commons were under of applying to your lordships for national justice. I am not insensible how deficient I have been, in not setting a matter of this importance in the most advantageous light; but I make no doubt, but that what is wanting in me, will be supplied by the abilities of others that follow, and that your lordships will find no defect in their discharge of the parts they have taken in this prosecution, whatever you may have found in the opening of the Charge, and in that part which has come to my share.

Sir *Joseph Jekyll.* I have the command of the House of Commons upon me, to bear a part in the prosecution of their Impeachment against this lord at the bar.

And that which is assigned to me, is first to observe to your lordships the nature of the Charge; and in the next place, to take notice of the Defence made to that Charge; and lastly, to give your lordships a general view of the Evidence which the Commons will produce to maintain their accusation.

And this I shall do with all the plainness I

am capable of, without attempting so vain and wicked a thing, as to impose upon your lordships, or divert you from the true merits of this cause.

My lords, the Charge exhibited against this lord, is a charge of high treason; high treason at the common law, as declared by the statute of the 25th of king Edward 3. And there are two species of high treason mentioned in that statute, which the Commons have taken notice of in their Articles of Impeachment. The first is compassing and imagining the death of the king; the second is levying war against his majesty.

My lords, the overt acts that are set down in the Articles, I think, may be reduced to these heads: first, a conspiracy of the earl of Wintoun, with other lords and gentlemen his accomplices, to levy war with an intent to depose the king; and a conspiracy to levy such a war hath been held a sufficient overt act of compassing and imagining the death of the king.

My lords, the next overt act is, his lordship's joining with his accomplices in proclaiming the Pretender, which is endeavouring to set up another prince in the room of his majesty; and I believe it will not be doubted, but that is likewise an overt act of the same species of treason. And if there wanted another overt act, the levying war against the king with an intent to depose him (which is likewise mentioned in the Articles, as a distinct species of treason) may serve for an overt act of the other species of compassing and imagining the king's death; for though it is reckoned in the statute as a distinct treason; yet it doth not thereby cease to be of the nature of an overt act of compassing and imagining the king's death, which it was antecedent to its being declared a distinct species; and this point is likewise supported by authorities, and many attainders have been upon it.

My lords, the second species of high treason I charge upon this lord, is, that of levying war against the king; and the overt acts mentioned are, the forming an army, marching in an hostile manner, seizing a town, the town of Preston, engaging and fighting with the king's forces.

My lords, perhaps it was not necessary to have alleged any of these overt acts of levying war against the king, because levying war itself being an act, it supersedes the necessity of instancing particular acts of hostility. But to avoid all cavils, these particular acts are likewise alleged in the Commons' Impeachment.

My lords, I find another crime charged upon this lord who stands at the bar, and that is murder, the murder of many of the king's faithful subjects. And although this crime is not mentioned in the title of the Articles, and there was a good reason for not doing it, since it is swallowed up in the high treason, the greater crime in the eye and estimation of the law, yet it doth not thereby lose its moral existence or real guilt; but on the contrary, by accompanying the other crime of high treason, is aggravated, and shews with what mischief his heart may be filled, who at the same time he is murdering his fellow-subjects, is meditating the destruction of his prince, and the overthrow of his country's liberty.

My lords, this is the nature of the Charge against my lord. In the next place I shall take notice of that which occurs to me to be material in his lordship's Defence, or the Answer he hath put into this Charge.

My lords, he hath pleaded generally Not Guilty; but not only relying on that general plea, he hath in his Answer added a particular specification of his case. He begins in his Answer, by taking notice and admitting, that, "he being taken with persons that were in arms against the government, might reasonably be presumed to be equally guilty, and to be justly joined with them in the same impeachment." He goes on to acquaint your lordships with what severe and barbarous usage he met with at his dwelling-house, which he says forced him from his house. He tells your lordships at last, he was "very unfortunately driven into the company of some of the gentlemen named in the Impeachment;" but he presumes to affirm to your lordships, "that he did not join them with a traiterous or rebellious design, but only with an intention to preserve himself from being insulted and assassinated;" then he says, "although he was constrained to keep the other lords and gentlemen company, yet he never joined them in an act of hostility." But yet he is still under some diffidence of his case, therefore your lordships will find at the close of his Answer he says, "But if upon his trial it shall appear that he hath committed any act, which in the rigour of the law may be construed to amount to the crime of high-treason, he hopes the innocence of his heart, and his ignorance in the law, will, by your lordships' intercession, render him an object of his majesty's mercy, which he and the rest, at the time of surrendering themselves, were encouraged by his majesty's officers to depend upon."

My lords, this special case which my lord hath made in his Answer, is not at all like the case in my lord chief justice Coke's third Institutes, fol. 10, upon an impeachment of high-treason. Several persons were found to join with sir John Oldcastle and others (who were in open rebellion) 'pro timore mortis, et quam 'cito potuerunt recesserunt,' and thereupon they were acquitted; but here my lord doth not pretend that any force was upon him, when he went in and joined the rebels. I may therefore presume to say this lord's Defence is a weak and doubtful one, but far it be from the Commons to desire to convict his lordship of the high-treason charged upon him by an infirmity in his Defence, or by any means whatever, but by the strength and clearness of the evidence they shall produce to your lordships, and for that I shall trouble your lordships but a very little with representing to you the general view of the evidence that we shall produce,

and it is this: This lord thought fit to go in and join the rebels, not alone, but accompanied with fourteen of his own servants; when he was there, he formed a troop, consisting of his own servants, and others; he paid the troop, commanded a squadron of the rebels' horse in their march; assisted at the several proclamations of the Pretender; when there was an alarm given of the coming of the king's forces, he got on horseback in order to oppose and fight them: and he was in arms and active with the rebels in the action at Preston; and we shall shew your lordships that at the surrender there no promise was made, no expectation of mercy was raised by any of the king's officers in the mind of this lord, or of any of his accomplices.

My lords, though this be not material to the issue now joined before your lordships, yet it being put into my lord's Answer, and being necessary for the vindication of public justice, we shall shew plainly there was not the least encouragement or intimation of that kind given.

My lords, the evidence will be more largely and particularly taken notice of by the gentleman who is to come after me; and I am sure my defects will be amply made up, by what he will offer to your lordships.

But I cannot sit down without taking notice, that if this heavy accusation be proved against the lord at the bar, it is a strange notion of loyalty, so much boasted of in my lord's Answer which he hath been pleased to entertain.

My lords, there is not a nobler or more useful principle belonging to a British subject, than true loyalty: Loyalty is a faithful and dutiful obedience to the king, under the sanction and direction of the law. If therefore his lordship hath contracted the guilt of this high offence against the law, which is charged upon him, he hath offended against this principle: And this I will say in general, whoever they be who cast the law out of the idea of loyalty, they loosen the bands of allegiance; for it is the law that binds upon the conscience of the subject the faith and allegiance he owes to his sovereign, as it doth upon the conscience of the sovereign, that justice and protection he affords to his subjects.

Attorney General. (Sir Edward Northey.) My lords, the Charges of high-treason mentioned in the Articles of Impeachment exhibited by the Commons of Great-Britain against the earl of Wintoun, the prisoner at the bar, and the nature of his crimes, having been fully opened by Mr. Hampden and sir Joseph Jekyll; what remains for my part is to give your lordships an account of the nature of the evidence we shall produce to your lordships against the prisoner to prove him guilty of the high-treason for which he stands impeached. He is charged with two species of treason, mentioned in the statute of the 25 Edw. 3, viz. First, compassing and imagining the death of our sovereign lord the king, whom God long preserve. Secondly, levying war against the king within this realm.

The evidence that will be a proof of the latter treason, will also prove the first: For levying war to depose the king, is an overt-act of conspiring the death of the king, and hath always been so adjudged.

I shall briefly, and with as much clearness and truth as I can, state the evidence against the prisoner, as it will appear by the witnesses we shall produce, without aggravating any thing which I do not think proper or necessary, your lordships being judges of the fact, and of the law arising thereupon. I shall only make this observation on the preamble to the Earl's Plea, that it directly contradicts his plea of Not Guilty; and that if what he alleges be taken as true, he therein owns himself to be guilty, though from thence he concludes that he is not guilty.

In September last the late earl of Mar in Perthshire, and in the beginning of October Mr. Foster with some of the attainted lords in Northumberland, with a great number of armed men, raised a rebellion in favour of the Pretender, and proclaimed him king of these realms, and set up his standard.

About the 7th or 8th day of October last, the earl of Wintoun left his seat at Seaton in the county of Lothian, armed with a broad sword and pistols, and carried with him fourteen or fifteen of his servants well mounted, and so armed; about the 10th day of October joined the earl of Carnwath and the lord viscount Kenmure at Moffett in the county of Annandale, and there they formed a little army, which was commanded by lord Kenmure till they joined Forster.

The lord Wintoun formed a troop with his own servants and others, and it was called his troop, and he paid his own servants 1*s.* 6*d.* or 2*s.* a day, and he commanded from that time a squadron of horse, till he and the others surrendered to the king's forces at Preston.

About the 14th or 15th day of October, the earl of Wintoun and the rest of the rebels marched from Moffett, in a hostile manner, with trumpets and a standard to Lochmaben. There the Pretender was proclaimed king of Scotland, England, &c. and the earl of Wintoun attended and joined in the proclamation, with his sword drawn. Thence the rebels marched to Auchtelfechen, Langholm, Hawick, Jedburg, Rodberry and Wooler, where, about the 20th day of October, Forster and his rebels, being about five hundred, joined the lord Wintoun and the other Scots, being three troops of horse.

From Wooler they all marched to Kelsoe in Tiviotdale, where the highland foot, commanded by Mackintosh, joined them. There, at the cross, the Pretender was again proclaimed king, with sound of trumpet and colours flying, the lord Wintoun and the rest assisting.

On the 17th of October they marched back to Jedburg, and there were alarmed with an account that the king's forces were near; on which they mounted, and marched out of town,

and drew up, the earl of Wintoun being very active; but the forces advancing being discovered to be part of the rebels, they returned to Jedburg; and on the 29th day of October they marched to Hawick.

Here cockades were made of blue and white ribbons for the Scots rebels, to distinguish them from the English, who had red and white, and the earl of Wintoun wore one, and gave others to his men.

On the 30th day of October, from Hawick they marched to Langholm: here, on the 31st day of October, about five or six hundred of the highland foot left them, and went back; and they would not suffer any person to come to them, to persuade them to return, but the earl of Wintoun: and he went to persuade them, but could not prevail, and he returned, and declared it was not his fault that they went away; and he after very much promoted the rebels coming into England.

Here the earl might have safely left the rebels, if he had thought fit, without hazard; and he had not gone alone, as in his preamble he alleged.

From Langholm the rebels marched to Langtown in Cumberland; and on the 1st day of November to Brampton; on the 2d, to Penrith; on the 3rd to Appleby; on the 5th to Kendall; and on the 6th to Kirby-Lonsdale.

At all these places the Pretender was proclaimed king, the earl of Wintoun assisting.

On the 7th day of November they marched from Kirby-Lonsdale to Lancaster, into which the rebels marched with their swords drawn, particularly the earl of Wintoun; and here they again proclaimed the Pretender king, lord Wintoun assisting in the circle.

Here the rebels seized arms, and some pieces of cannon.

From Lancaster the horse of the rebels marched on the 9th day of November to Preston, the foot halted at Garstang, and came to Preston the 10th.

In the way to Preston the rebels were joined with about 1,500 men, most part being of the county of Lancaster.

And at Preston the Pretender was again proclaimed at the cross.

During this march, at several places, particularly at Duns, Brampton and Appleby, the public revenue of the king was collected by the rebels, and cesses raised on the king's subjects.

They marched with drums, trumpets and colours; and, where they could, took prisoners such as appeared for his majesty.

They caused the Pretender to be prayed for, as king in the churches in Lancaster, and other places in their march.

Their constant health was the Pretender's, by the name of king James, and success to their cause.

During the whole march the earl of Wintoun never shewed any uneasiness or backwardness, but always appeared as forward and active as any of the rebels.

Mr. Calderwood, their quarter-master, quartered the Scots in all places; and the best, next to the lord Kenmure's, he provided for the earl of Wintoun, who used to complain, if good quarters were not provided for him.

The next part of our evidence will be to shew what happened at Preston, of which the rebels had taken possession the 10th day of November.

On Saturday the 12th day of November, about one in the afternoon, general Wills with the king's forces invested the town, and attacked it that day and on Sunday, and the rebels defended it, and had made a barrier at the entering of the town, and planted the foot in several lanes and streets for their defence, and had the cannon with them which they seized at Lancaster.

The earl of Wintoun during the attack was with the other lords, at the head of 200 men, drawn up in the market-place; he had his sword, a pistol in one hand, and another in his breast; during that attack, several of his majesty's officers and soldiers were killed.

On Sunday, about ten in the morning, general Carpenter came also to Preston, with the king's forces under his command. Thereupon the rebels finding themselves to be surrounded, about three in the afternoon sent out colonel Oxborough to the generals, to know what terms would be granted to them, if they would surrender: The generals gave this answer, That no terms would be granted to them, but that they must surrender at discretion.

Soon after the rebels sent out captain Dalziel, to desire time till seven o'clock on Monday morning, to consider whether they should surrender at discretion. Upon which general Carpenter sent colonel Churchill, and general Wills colonel Cotton, into the town, to acquaint the rebels that the time desired should be allowed them, provided they sent out immediately an English lord, and one of the Mackintoshes, as hostages, that none within the town should attempt to escape, or make any works for their defence.

Colonel Churchill and colonel Cotton went into the town, and there met the earl of Wintoun and the other lords, and Mr. Forster, and told them their message: All the lords treated with them about the surrendering the town, and severally gave their words, that if time might be allowed them till next morning to surrender, they would use their endeavours that none should make their escape, and that they would not throw up any new works for their defence. Which terms were agreed to, and the earl of Derwentwater and colonel Mackintosh were delivered to them, and brought to the generals as hostages, and staid all night; and in the morning early the rebels agreed to surrender at discretion; and the lord Forester took possession of the town, where, he found the earl of Wintoun in arms, and he surrendered himself to the lord Forester, and delivered to him two cases of pistols; and being in custody, complained of the little regard lord Forster had shewed to a man of his quality

and said all the respect that he had shewed him, was to give him the post of honour when there was any danger.

The generals Carpenter and Wills never offered any other terms than that the rebels should surrender at discretion, never promised them mercy, or that they would even intercede for mercy for them; nor gave the colonels, sent into the town, any orders to offer mercy; nor did they: All the encouragement they gave them to surrender at discretion, was, that if they did so, they should not be immediately put to the sword by the soldiers; and denied to promise, even to recommend them to the king's mercy.

This is the substance of the evidence we shall lay before your lordships, and the order we shall give it in; and if what I have opened be proved, as I believe it will, or I would not have mentioned it, I apprehend it will fully prove the charge against the noble lord, and shew how vain the allegations in the preamble to his plea are.

I beg leave to say one thing more. The noble lord alleges, in the preamble to his plea, that he never shot off a pistol: Certainly that is not material, for assembling and marching in a hostile manner for a public purpose, and opposing the king's forces, is levying a war, although the lord accused never shot off a pistol.

We will call our witnesses, and begin with William Calderwood, who was quarter-master the whole time with lord Wintoun.

Sir *J. Jekyll.* My lords, we desire that William Calderwood may be sworn.

L. H. Steward. Is it William Calderwood you call?

Sir *J. Jekyll.* My lords, we desire William Calderwood may be sworn.

And he was sworn by the clerk accordingly.

Sir *J. Jekyll.* Mr. Calderwood, pray, acquaint my lords with what you know concerning this rebellion, or any part that the noble lord at the bar had in it; tell the story according to your own method.

L. H. Steward. Do you hear what question is asked? You are upon your oath; give an account of what you know of the late rebellion, and what part the noble lord at the bar had in it.

Calderwood. Upon the eleventh of October I went, with about seventy horse, to join my lord Carnwath, my lord Wintoun, and my lord Kenmure at Moffett; where the Pretender was proclaimed.

Att. Gen. We desire that he may acquaint your lordships, what number of men they had at Moffett.

Calder. One hundred and fifty.

Att. Gen. What number of men?

Calder. One hundred and fifty.

Att. Gen. Was the prisoner at the bar amongst them? and did he bring in any with him?—*Calder.* Yes.

Att. Gen. About what time did he come in?

Calder. Towards the evening of the eleventh day.

Att. Gen. What day?

Calder. The eleventh.

Sir *J. Jekyll.* What number did the lord Wintoun bring with him?

Calder. About fourteen.

L. H. Steward. You speak of the prisoner at the bar; he came in with fourteen men?

Calder. Yes, my lord,

Att. Gen. Were they all armed? or how many were armed?

Calder. I don't know whether all were, but the most part of them were, with sword and pistol.

L. H. Steward. You have said at what place they were, but your voice did not reach hither; at what place?—*Calder.* At Moffett.

Sir *J. Jekyll.* When my lord at the bar joined the rebels, what did they do? Go on, and tell your story.

Calder. They went to Lochmaben.

Sir *J. Jekyll.* When did the lord at the bar join them there?—*Calder.* The next day.

Att. Gen. What was done there?

Calder. The Pretender was proclaimed there next day.

Att. Gen. Was the noble lord at the bar assisting at the proclaiming of him?

Calder. Yes, he was.

Att. Gen. In what manner did he assist?

Calder. With his sword drawn, on horseback.

L. H. Steward. Who did assist at the proclamation with a drawn sword?

Calder. The earl of Wintoun.

Att. Gen. Whence did you march from thence?—*Calder.* To Auchtelfechen.

Att. Gen. Whither did you march from thence?—*Calder.* To Langholm.

Sir *J. Jekyll.* And whither then?

Calder. To Hawick.

Att. Gen. Go on.

Calder, The Pretender was proclaimed there.

Sir *J. Jekyll.* Was the lord Wintoun present at the proclamation?—*Calder.* Yes.

Sir *J. Jekyll.* Whence did you go from thence?—*Calder.* To Jedburgh.

L. H. Steward. Was the Pretender proclaimed there?—*Calder.* Yes.

Sir *J. Jekyll.* Who were present?

Calder. The earl of Wintoun, Carnwath, and all the lords.

Att. Gen. Where did you march then?

Calder. To Rodberry.

Att. Gen. What happened there?

Calder. We were joined by general Forster.

Att. Gen. How long did you stay there?

Calder. Two nights.

Att. Gen. Was the Pretender proclaimed at Rodberry?—*Calder.* No.

Att. Gen. What place did you go next to?

Calder. To Wooler.

Att. Gen. Whither from thence?

Calder. To Kelsoe; where we were joined by the Highland foot.

Sir *J. Jekyll.* What foot do you mean?

Calder. The Highlanders.

Sir *J. Jekyll.* Who commanded them?

Calder. Brigadier Mackintosh.

Sir *J. Jekyll.* From Kelsoe whither did you go?—*Calder.* Back again to Jedburg.

Sir *J. Jekyll.* Whither from Jedburg?

Calder. To Hawick.

Att. Gen. What happened at either of these places?—*Calder.* Nothing.

Sir *J. Jekyll.* At Hawick, did nothing happen there?—*Calder.* No.

Att. Gen. Was the Pretender proclaimed at Hawick at either of the times?

Calder. Yes, the first time, but not the second.

Att. Gen. Who were present?

Calder. All the lords.

Att. Gen. Name them—was the prisoner at the bar there?—*Calder.* Yes.

Sir *J. Jekyll.* From Hawick, the second time, to what place did you go?

Calder. To Langholm.

Att. Gen. What happened at Langholm?

Calder. Five or six hundred of the Highland foot went from us.

Att. Gen. Was there any endeavours used to bring those five hundred Highlanders back again?—*Calder.* I do not know of any.

Sir *J. Jekyll.* Who went to them? Did any of those that were in arms go to them?

Calder. I was not there when they went off.

Att. Gen. Did the noble lord attempt to go with them, the prisoner at the bar?

Calder. No; at Jedburg the earl of Wintoun went up to them, to make them come back; where the foot designed to go, and the horse were drawn up; and they would have nobody come to them but the prisoner.

L. H. Steward. I do not hear you; what do you say?

Calder. At Jedburg the earl of Wintoun went to them.

Att. Gen. Did he declare any thing after his return, about their going off, or their not returning?—*Calder.* No, not at Jedburg.

Att. Gen. Any where else?

Calder. I heard him at Langtown say, it was not his fault they were gone off.

Att. Gen. Pray, might not my lord Wintoun have gone off with them, if he would?

Calder. Yes, he might.

Att. Gen. From Langtown whither did you go?—*Calder.* To Brampton.

Att. Gen. Whither next?

Calder. To Penrith.

Att. Gen. Whither next?

Calder. To Appleby.

Att. Gen. Whither next?

Calder. To Kendall.

Att. Gen. Whither next?

Calder. To Kirby-Lonsdale.

Att. Gen. What happened there?

Calder. The Pretender was proclaimed at the two last places.

Sir *J. Jekyll.* Who was there?

Calder. I saw him there.

Sir *J. Jekyll.* Who?

Calder. The earl of Wintoun at Kirby-Lonsdale.

Sir *J. Jekyll.* Whither did you go from thence?—*Calder.* To Lancaster.

Sir *J. Jekyll.* Was the Pretender proclaimed there?—*Calder.* Yes.

Sir *J. Jekyll.* Who were present?

Calder. Earl of Wintoun, Kenmure, Carnwath, Nithisdale.

Sir *J. Jekyll.* How did they enter the town of Lancaster?—*Calder.* Sword in hand.

Att. Gen. Was there any arms or any guns seized?

Calder. Yes, six cannon were seized.

Att. Gen. From whence did they take them?

Calder. From a ship.

Att. Gen. Speak up, and tell my lords.

Calder. They seized six guns.

Att. Gen. Whence did they take them?

Calder. From a ship.

Att. Gen. What became of them?

Calder. They carried them to Preston, and mounted them there.

Att. Gen. What time came you to Preston from Lancaster?

Calder. What time? we staid two nights at Lancaster.

Mr. *Cowper.* Sir, I desire to ask you a question—whether you was at church at Lancaster?—*Calder.* Yes.

Mr. *Cowper.* Who was prayed for there?

Calder. The Pretender as king of England.

Sir *J. Jekyll.* Who was at church? Was it the parish church?

Calder. Yes, the parish church.

Sir *J. Jekyll.* Who was present at church?

Calder. I do not remember.

Mr. *Cowper.* From Lancaster whither did you go then?—*Calder.* We went to Preston.

Mr. *Cowper.* What day did you arrive at Preston?

Calder. The 9th or 10th day of November.

Mr. *Cowper.* Did the horse and foot arrive the same day?

Calder. No, the horse came in one day, and the foot another.

Mr. *Cowper.* How long after the horse did the foot come?

Calder. The next day; then the Pretender was proclaimed. The horse came in on a Wednesday, the foot on Thursday.

Att. Gen. Had you any distinction between the Scots and English, by cockades?

Calder. Yes.

Att. Gen. What was the distinction?

Calder. The Scots had blue and white, and the English had red and white.

Att. Gen. Did the noble lord meddle with any cockade?

Calder. Yes, he had one at Hawick.

Att. Gen. Did he distribute them?

Calder. Yes, he delivered them from my hands.

L. H. Steward. Who do you speak of? Raise your voice.

Calder. I say, my lord, the earl of Wintoun had a cockade at Hawick, and took several of them from my hands, and gave them away as he thought fit.

Sir *J. Jekyll.* You saw the earl of Wintoun at Preston when the king's forces came thither; do you remember what passed afterwards?

Calder. My lord, I saw him, he had sword and pistols; he was a-foot by the church-yard.

Att. Gen. As you came along to Preston, acquaint my lords whether you know any thing of the public revenues being collected?

Sir *J. Jekyll.* Before that, when my lord was on foot with sword and pistols going towards the church-yard, was there any forces drawn up there?

Calder. Yes, both horse and foot were drawn up in the church-yard.

Sir *J. Jekyll.* While my lord was in company, and in this march, was there any troop formed?

Calder. Yes, there was a troop.

Sir *J. Jekyll.* Who had any of those troops?

Calder. My lord Wintoun had the first.

Sir *J. Jekyll.* Of whom did his troop consist?

Calder. It consisted partly of gentlemen, and partly of his own servants.

Sir *J. Jekyll.* By whom were they paid?

Calder. By my lord Wintoun.

Sir *J. Jekyll.* How much a day?

Calder. Two shillings a day.

Sir *J. Jekyll.* In what manner was the troop accoutred?

Calder. Very well, with swords and pistols.

Att. Gen. Did my lord's servants retain his livery in the army?

Calder. He had five in liveries.

Att. Gen. What were the rest?

Calder. Domestic gentlemen.

Att. Gen. Did my lord command only that, or any other body?

Calder. He commanded a squadron.

Sir *J. Jekyll.* In your passage, did my lord discover any uneasiness, or seek for any opportunity of leaving them?

Calder. He never did that I know of.

Sir *J. Jekyll.* I think you quartered him; did he complain of his quarters at any time?

Calder. He ordered me to give him good quarters.

Sir *J. Jekyll.* And accordingly you did for him?—*Calder.* Yes.

Att. Gen. We will go on. What happened at Preston? What time did the king's forces come there?

Calder. We came on Wednesday, they came on Saturday.

Att. Gen. Tell my lords what happened after the king's troops came to town.

Calder. We defended the town two nights.

Att. Gen. When did they surrender?

Calder. They surrendered on Monday.

Att. Gen. What past before? Did the king's troops attack it, and demand a surrender?

Calder. Yes; and we defended it.

Sir *J. Jekyll.* Was there any provision made to secure the town? Aequaint my lords how it was defended.

Calder. We barricadoed it in every street.

Sir *J. Jekyll.* After what manner? How?

Calder. We had two cannon in every street.

Att. Gen. During the time the king's troops were at the town, what share did my lord Wintoun bear in the defence of it? Where was he?

Calder. I saw him go towards the church-yard.

Att. Gen. Was there a body of men with him in the church-yard?

Calder. Yes, there was.

Sir *J. Jekyll.* When my lord joined the men, and in his march, was there any levying of money?

Calder. They raised taxes, as they called it, a cess.

Sir *J. Jekyll.* We have done with this witness; if my lord hath a mind to ask him any questions, he is at liberty to do it.

L. H. Steward. My lord, if you have any question to ask, propose it, and it shall be asked.

L. *Wintoun.* I cannot examine him; I desire my counsel may examine him.

L. H. Steward. I told your lordship your counsel are not to assist your lordship in cross-examining the witnesses; you have a liberty of cross-examining them yourself, by proposing your questions, and they will be asked by the Court.

L. *Wintoun.* I never examined a witness in my life, I desire my counsel may do it for me.

L. H. Steward. Have you any questions?

L. *Wintoun.* My lord, I hope you will allow my counsel to speak for me.

L. H. Steward. Have you any question you desire to be asked, and it shall be asked?

L. *Wintoun.* I desire my counsel may ask for me; it is very hard to have none to speak for me, and there are twenty against me.

[Proclamation for silence as usual.]

L. H. Steward. My lord Wintoun, I hope now you will be better heard. If you have any question to ask this witness, if your lordship propounds it, it shall be asked him.

L. *Wintoun.* My lord, allow my counsel to speak for me, I have but two.

L. H. Steward. My lord, I have acquainted you, (but apprehend you did not hear me) that the law of the land doth not allow it.

Sir *J. Jekyll.* My lords, if my lord at the bar doth not think fit to ask this witness any questions, nor your lordships, we must call another witness.

L. H. Steward to Calderwood the witness. Direct your answer this way. You have mentioned several proclamations of the Pretender, was there any at which my lord, the prisoner at the bar, was not present?

Calder. I did not see him at the proclamation at Preston.

L. H. Steward. At how many other places did you see him?

Calder. I saw him at Wooler, Jedburg, Kelsoe, and Kirby-Lonsdale and Lancaster, where the Pretender was proclaimed.

L. H. Steward. Did he join in causing him

to be proclaimed, or did he seem to mislike it?

Calder. No, my lord, he was always among the rest.

Att. Gen. With your lordship's favour, the next witness is James Lindsey, we desire he may be sworn.

L. *Wintoun.* My counsel are present, pray allow my counsel to speak for me, I am not used to speak in such assemblies.

[*Lindsey* was sworn accordingly.]

L. H. Steward. Who do you call next, gentlemen?

Att. Gen. James Lindsey is sworn, we desire he may give your lordships an account, whether he was at any time at Moffett when the Pretender was proclaimed, and what share my lord Wintoun had in it?—I believe it will be better to have something for the witnesses to stand upon;—stay a little, till something is brought to stand upon.

[A chair was brought to stand upon.]

Sir *J. Jekyll.* Was you at Moffett?

Lindsey. Yes.

Sir *J. Jekyll.* What past there? And who was at that place?

L. H. Steward. Keep your face, and direct your answer this way; though the gentlemen on the left hand ask you questions, keep your face this way.

Lindsey. I saw several gentlemen.

Sir *J. Jekyll.* But did you see my lord Wintoun there?

Lindsey. First I saw him there; the second time at Jedburg; the third time at Kendall; and the last at Preston.

Sir *J. Jekyll.* You saw him at these places you have mentioned, what happened at either of these places?

Lindsey. The first time I saw him, he was riding on a grey horse, mounted with sword and pistol; the second time sitting with the guard; and at Kendall on horseback, when he came out of town, I saw him riding on horseback; and at Preston, I saw him riding at the market-place, with other gentlemen along with him.

Sir *J. Jekyll.* Was there any proclamation made at any of these places?

Lindsey. Yes, there was a proclamation at Jedburg; they told me they proclaimed the Pretender.

Sir *J. Jekyll.* Did you hear the proclamation?

Lindsey. I heard the voice, but not the words pronounced.

Sir *J. Jekyll.* Who assisted at it?

Lindsey. A great many gentlemen on horseback.

Sir *J. Jekyll.* Was the prisoner at the bar there?—*Lindsey.* I did not see him.

Sir *J. Jekyll.* Was the prisoner at the bar at Lancaster?

Lindsey. I do not know, I was not there.

Sir *J. Jekyll.* Was he at Preston?

Lindsey. Yes, he was there.

Sir *J. Jekyll.* Was you present when they proclaimed the Pretender there?

Lindsey. I was standing at a great distance, but did not hear it; but saw the army.

Sir *J. Jekyll.* From those places when you marched, in what manner did you march? In squadrons?—*Lindsey.* Yes, in squadrons.

Sir *J. Jekyll.* Did the noble lord at the bar command a squadron?

Lindsey. I did not know what his lordship's command was; he rode at the head of the first squadron.

Att. Gen. Did he march along with the forces?

Lindsey. I had very seldom occasion to see his lordship. I believe he did.

Sir *J. Jekyll.* Do you know any thing of raising money?

Lindsey. I heard talk of it only.

Sir *J. Jekyll.* What troops were with the rebels?—*Lindsey.* I cannot tell how many.

Sir *J. Jekyll.* Do you remember any one troop?—*Lindsey.* Yes, there was Lockhart's.

Sir *J. Jekyll.* Any beside?

Lindsey. There was one went by the name of my lord Wintoun's; but I knew it not.

Att. Gen. Who was there in that troop of Lockhart's?—*Lindsey.* Several gentlemen.

Att. Gen. Was there any but gentlemen?

Lindsey. Some private men and servants.

Att. Gen. Whose servants?

Lindsey. The captain's, Mr. Lockhart had two or three himself.

Att. Gen. Was there any other servants?

Lindsey. No; I do not think there was any other.

Att. Gen. Did you know the troop called my lord Wintoun's?

Lindsey. I did not know it, there was one called his.

Att. Gen. Was there any servants in it?

Lindsey. There were servants in that company.

Sir *J. Jekyll.* Were they armed with sword and pistol?—*Lindsey.* Yes.

Sir *J. Jekyll.* Was you at Preston when the king's forces invested it?—*Lindsey.* Yes.

Sir *J. Jekyll.* How did the prisoner behave himself?—*Lindsey.* I cannot tell.

Sir *J. Jekyll.* My lords, we have done with our examination of this witness.

L. H. Steward. My lord Wintoun, if you would ask this witness any question, propose it, and it shall be asked.

After a considerable pause,

Att. Gen. Our next witness is Elias Cammeron, we desire he may be sworn.

He was sworn accordingly.

Mr. *Cowper.* My lords, we desire he may be asked whether he was in the rebels army.

L. H. Steward. You hear the question; direct your answer this way.

Cammeron. Yes, I was there.

Mr. *Cowper.* Under whose command?

Cammeron. Under the command of captain Mackleane.

Mr. *Cowper.* And in whose regiment?

L. H. Steward. Turn your face this way, that your voice may be heard.

Cammeron. My lord Charles Murray's regiment.

L. H. Steward. Whose command was you under?

Cammeron. Under captain Mackcleane.

Sir *J. Jekyll.* In whose regiment?

Cammeron. In my lord Charles Murray's regiment.

Sir *J. Jekyll.* Will you give a general account of what you know from the first time you came into the army of the rebels?

Cammeron. I joined them at Moffett, and then we proceeded to a place called Lockmaben; and then we marched to Duns, from thence to Kelsoe; within two miles of Kelsoe we met the horse. Then we went from Kelsoe to Jedburg, I saw my lord Wintoun there; the next day we rested. Then we marched, from Langtown to Brampton; from Brampton to Penrith; from Penrith to Kirby-Lonsdale; and from Kirby-Lonsdale to Lancaster, where I saw my lord Wintoun at the head of his horse with a trumpet sounding before him; I saw them march; we staid a day at Lancaster, and the horse went into Preston the next day; either Wednesday or Thurday I saw my lord Wintoun; and after the king's forces were come, I saw my lord Wintoun with other lords.

Mr. *Cowper.* You have mentioned proclaiming the Pretender at one or two towns, pray, give an account at how many places you observed that he was proclaimed?

Cammeron. I heard him proclaimed at Duns, at Kelsoe, and at Lancaster.

Mr. *Cowper.* I desire to know if at any of these places you observed the prisoner, my lord Wintoun?

Cammeron. At Lancaster I did observe him to go into the ring when they were going to proclaim him, but at the time of the proclamation I did not see him, being in the outward part of the ring.

Att. Gen. Please to acquaint my lords, whether in your march you took any prisoners?

Cammeron. When we were near Penrith, we took a great many prisoners. I did not see them taken.

Att. Gen. Was the prisoner at the bar with you in that march?

Cammeron. I cannot really determine. I saw him there.

Att. Gen. Where did you see him first?

Cammeron. At Kelsoe, when the foot joined us.

Att. Gen. Where did you take the prisoners?

Cammeron. At Penrith.

Att. Gen. Did the noble lord at the bar ever leave you after he joined you?

Cammeron. I heard he was not for coming into England. I only heard this by report.

Sir *J. Jekyll.* Was you at Seaton house?

Cammeron. Yes.

Sir *J. Jekyll.* Was my lord Wintoun there?

Cammeron. No, only brigadier Mackintosh and the foot.

Sir *J. Jekyll.* What time did they come to Seaton house?

Cammeron. On Saturday, to my best remembrance, they were at Seaton house; then the duke of Argyle returned back, and that night about six or seven o'clock we retreated to Seaton house, and staid there Sunday, Monday and Tuesday.

Att. Gen. At the time the Highlanders came to Seaton house, was this lord there?

Cammeron. No, I do not know that he was.

Att. Gen. Do you know any thing of the public revenues being gathered at Duns, Brampton, and Appleby?—*Cammeron.* Yes.

Att. Gen. Did they give any receipts?

Cammeron. Yes, they gave receipts. I saw one which was to this effect: after the year and date, then, Received such a sum of money as excise-duty, due from such a person to such a person.

Att. Gen. During the time the king's forces attacked Preston, what did you observe my lord Wintoun do?

Cammeron. What I observed of my lord Wintoun was this: I was there by the church-yard, there I saw my lord Wintoun in the church-yard, with my lord Kenmure and Derwentwater at the time of the action, but I did not see him in the action, and whether he had pistols or not I cannot be positive.

Att. Gen. Were there any persons at the market-place?

Cammeron. I was not at the market-place.

Att. Gen. You was at the church-yard?

Cammeron. Yes.

Sir *J. Jekyll.* When you observed my lord Wintoun, what did you see him do?

Cammeron. I observed nothing, that he was like the rest, riding to and fro with the rest.

Sir *J. Jekyll.* Did you see him assisting at the proclamation of the Pretender at Preston?

Cammeron. I saw him go into the ring with the rest; but I did not see him at the time of the proclamation.

L. H. Steward. I believe in this narration his voice did not reach this end of the Court; therefore if he hath said any thing proper to be taken notice of, you will do well to have it over again.

Att. Gen. We ask him, whether he knew the noble lord to be at any of those places assisting or proclaiming the Pretender?

Cammeron. I did not observe him but at Lancaster.

Att. Gen. What happened there?

Cammeron. They proclaimed the Pretender there, and I saw him go into the ring.

Att. Gen. But did you not observe him at the time of proclaiming the Pretender?

Cammeron. I saw him go into the market-place with the rest.

L. H. Steward. You saw him go in when the rest went in to proclaim the Pretender?

Cammeron. Yes.

Att. Gen. Did he then ride at the head of the Scots horse?

Cammeron. Yes, he rid at the head of some horse, and a trumpet sounding before him.

Att. Gen. Was that the time when the Pretender was proclaimed at Lancaster?

Cammeron. Yes.

Att. Gen. Whether had my lord his sword by his side, or had he it drawn?

Cammeron. Really I cannot be positive to that.

L. H. Steward. My lord Wintoun, will you ask this witness any question.

L. *Wintoun.* My lords, I be not prepared, so I hope your lordships will do me justice; I was not prepared for my trial; I did not think it would come on so soon, my materiel witnesses not being come up, and therefore I hope you will do me justice, and not make use of Cowper-law, as we used to say in our country, hang a man first, and then judge him.

L. H. Steward. Did you hear? My lord Wintoun, please to speak it again.

L. *Wintoun.* I said that I was not prepared for my trial; I did not think it would come on so soon. Some gentlemen are just come up; please your lordships to let me know what they say, that I may be the better able to make my defence.

L. H. Steward. If your lordship will ask this witness any question, now is your time; but if what you are saying is your defence, you should reserve that till the Commons have done.

Robert Patten sworn.

Proclamation made for silence as usual.

Sir *W. Thomson.* With your lordship's permission I beg leave to ask this witness, whether at any time he was in company with these rebels, and when he first joined them?

Patten. I joined them on the 20th of October, at Wooler.

Sir *W. Thomson.* Pray, Sir, will you give an account what past from that time you joined them till they were taken.

Patten. I remember from Wooler we marched to Kelsoe.

Sir *W. Thomson.* Did you see my lord Wintoun at Wooler?

Patten. I cannot say I did.

Sir *W. Thomson.* Did you see him at Kelsoe?

Patten. I saw him when the proclamation was there.

Sir *W. Thomson.* What proclamation?

Patten. To proclaim the Pretender.

Sir *W. Thomson.* Was my lord Wintoun present?—*Patten.* Yes.

Sir *W. Thomson.* In what manner?

Patten. He appeared among the rest of the gentlemen.

Sir *W. Thomson.* Was he armed?

Patten. Only his sword, that I saw.

Sir *W. Thomson.* Pray what passed afterwards?

Patten. We came to Kelsoe, and from thence we went to Jedburg.

Sir *W. Thomson.* Where did you go?

Patten. To Jedburg.

Sir *W. Thomson.* What passed there?

Patten. After they came to Jedburg, they were alarmed by a party, they thought of the king's forces, but it happened to be some of their own party.

Sir *W. Thomson.* What happened on that occasion?

Patten. I saw the lords, and among the rest my lord Wintoun, at the head of some horsemen there drawn up.

Sir *W. Thomson.* In what manner?

Patten. The earl of Wintoun was drawn up with his men, and the Scots lords with their men.

Sir *W. Thomson.* With what intent?

Patten. They apprehended general Carpenter, with the king's forces, was coming to attack them.

Sir *W. Thomson.* You say my lord Wintoun marched out at the head of some horsemen?

Patten. I cannot say I saw him march out, but I saw him at the head of some horse.

Sir *W. Thomson.* What happened afterwards?

Patten. They returned to Jedburg and staid all day, and the next day they marched to Hawick.

Sir *W. Thomson.* What happened at Hawick?

Patten. At midnight we were again alarmed with a party.

Sir *W. Thomson.* What happened upon that?

Patten. I saw my lord Wintoun in the street.

Sir *W. Thomson.* Was there any preparation made for defence?

Patten. Yes; they were going out to defend themselves.

Sir *W. Thomson.* You saw my lord Wintoun there?—*Patten.* Yes.

Sir *W. Thomson.* In what manner?

Patten. He had his sword by his side.

Sir *W. Thomson.* When you went from that place, where did you go then?

Patten. We went to Langholm.

Sir *W. Thomson.* What passed there?

Patten. We continued there till next morning, when we consulted whether to march for England or for Scotland; a party of horse went for Dunfreise. The Highlanders, a great part of them went off there, and would not march for England.

Sir *W. Thomson.* Was my lord Wintoun with them at their going off?

Patten. I saw my lord Wintoun go off, and come up again: I spoke to my lord upon that account.

Sir *W. Thomson.* What did his lordship say?

Patten. Nothing materiel; but asked me if I knew the country.

Sir *W. Thomson.* When the foot went off at Langholm, did my lord go to them?

Patten. I saw him go up to them, and make a halt.

Sir *W. Thomson.* But he came back again?

Patten. Yes.

Sir *W. Thomson.* At that time, if my lord

had had any inclination to it, whether might he not have gone off?

Patten. Yes; I cannot tell my lord's inclination, but any body might have gone off, there was no restraint upon him.

Sir *W. Thomson.* Whither did you march from Langholm?—*Patten.* To Langtown.

Sir *W. Thomson.* Did any thing happen at Langtown?—*Patten.* We marched through.

Sir *W. Thomson.* Whither did you go then?

Patten. To Brampton.

Sir *W. Thomson.* Whither from thence?

Patten. To Penrith.

Sir *W. Thomson.* What happened there?

Patten. There was the *posse comitatus*, whether that *posse comitatus* were the militia, I cannot tell; they were got together, and upon our advancing they dispersed themselves.

Sir *W. Thomson.* Where was my lord Wintoun then?

Patten. I saw him among the Scots lords there, after his usual manner, on horseback, with sword and pistols.

Sir *W. Thomson.* Was his sword drawn?

Patten. No.

Sir *W. Thomson.* Whither did they go then?

Patten. They went to Appleby.

Sir *W. Thomson.* What passed at Appleby?

Patten. They went from Appleby to Kendall.

Sir *W. Thomson.* What happened there?

Patten. A proclamation was read as at most of the towns.

Sir *W. Thomson.* Did you see my lord Wintoun at any of those proclamations?

Patten. No, I did not.

Sir *W. Thomson.* Where did you go then?

Patten. To Kirby-Lonsdale.

Sir *W. Thomson.* Did any thing happen remarkable there?

Patten. I dined with the Scots lords at Kirby.

Sir *W. Thomson.* What happened there? and what healths were drank there?

Patten. The Pretender's health, and success to our cause, that was the usual health.

Sir *W. Thomson.* Was my lord Wintoun there?

Patten. Yes; there was my lord Kenmure, Carnwath, and the other lords.

Sir *W. Thomson.* Did he drink the health among the rest?—*Patten.* All the table did.

Sir *W. Thomson.* From thence whither did you go?—*Patten.* To Lancaster.

Sir *J. Jekyll.* At the place where you drank healths, was there any other remarkable health?

Patten. The usual health was good success to the cause in hand.

L. H. Steward. Who drank that health?

Patten. All the company.

L. H. Steward. Who was in company? was the prisoner at the bar in company?

Patten. Yes, he was.

Sir *W. Thomson.* When you came to Lancaster, in what manner did you enter that town?

Patten. We entered that town more regularly than any other we had marched through.

Sir *W. Thomson.* After what manner?

Patten. They marched into the town with their swords drawn, and the Highlanders were drawn round the cross; the gentlemen marched into the town on horseback; the Pretender was proclaimed there.

Sir *W. Thomson.* You was by when the Pretender was proclaimed?—*Patten.* Yes.

Sir *W. Thomson.* Was my lord Wintoun there?

Patten. I cannot say I saw him there: I saw him in the town at the head of some horse, with his sword drawn.

Sir *W. Thomson.* Was there any cannon seized at Lancaster?

Patten. Some pieces of cannon were seized.

Sir *W. Thomson.* What did you do with the cannon?

Patten. We carried them with us to Preston.

Sir *W. Thomson.* When there were prayers in the parish church at Lancaster, who was prayed for?—*Patten.* The Pretender.

Sir *W. Thomson.* Do you know who were present?—*Patten.* A great many.

Sir *W. Thomson.* Was the lord Wintoun there?—*Patten.* I cannot tell.

Sir *W. Thomson.* Did you observe at any time any force or compulsion used to detain my lord Wintoun?—*Patten.* No, none at all.

Sir *W. Thomson.* Did he shew any uneasiness, or any backwardness to go with them?

Patten. I cannot be judge of my lord's uneasiness, it did not appear so.

Sir *W. Thomson.* By whose direction was the prayer for the Pretender?

Patten. By order of Mr. Forster.

Sir *W. Thomson.* My lords, we have done with this witness.

L. H. Steward. My lord Wintoun, will you please to ask this witness any question?

L. *Wintoun.* No.

Att. Gen. My lords, we desire to call my lord Forrester.

[Then a chair was placed for lord Forrester near the clerk's table; and the oath was administered to him by the lord high steward.]

Sir *J. Jekyll.* My lords, we beg leave to ask this noble lord a question or two: was your lordship at Preston?

L. *Forrester.* Yes, my lords.

L. H. Steward. Your lordship will please to raise your voice.

L. *Forrester.* I was there with the king's troops, and had the honour to command brigadier Preston's regiment. We came before Preston on Saturday the 12th of November.

Att. Gen. Will your lordship acquaint my lords what passed at Preston when you was there? Whether you was by at Preston when the king's forces attacked it, and whether it was defended by the rebels, and what else passed there?

L. *Forrester.* I was there, and commanded one of the attacks under brigadier Honeywood.

Att. Gen. Was the town defended by the rebels, and were any of the king's officers and soldiers killed?

L. *Forrester.* Yes, a great many.

Att. Gen. Please to give an account what number.—L. *Forrester.* We lost a great many.

Att. Gen. Can you guess the number?

L. *Forrester.* No, I cannot exactly tell: a good many; we had betwixt sixty and seventy of the regiment I had the honour to command killed and wounded.

Att. Gen. How many were killed?

L. *Forrester.* About thirty were killed dead on the spot.

Att. Gen. How long did that attack last, before they desired to capitulate?

L. *Forrester.* From Saturday till Sunday morning between one and two o'clock.

Sir *J. Jekyll.* I think your lordship had a command to take possession of the town?

L. *Forrester.* Yes; I took possession of the church-yard Monday morning about six o'clock.

Sir *J. Jekyll.* Will you please to give an account of what you know of the noble lord at the bar when the town surrendered.

L. *Forrester.* The town surrendered at six-o'clock in the morning; I came into the church-yard and took possession of it; then I went to the Mitre-tavern, were that lord and the rest of the lords were; I disarmed them.

Att. Gen. What arms did my lord Wintoun deliver up that time?

L. *Forrester.* Two cases of pistols.

Sir *J. Jekyll.* If my lord hath a mind to ask any question of the noble lord that hath been examined, we desire he may do it.

L. H. Steward. My lord Wintoun, will you be pleased to ask this noble lord any question concerning this matter at Preston?

L. *Wintoun.* I had no arms: please to ask him whether I had sword or pistol in my hand?

L. H. Steward. Take my lord's question in writing.

[Then the Clerk went and took it.]

Question. Whether the arms your lordship mentioned to have been delivered to you, whether he had the arms then about him, or his lordship did not say they were in the stable?

L. *Forrester.* He brought the arms to me himself, and gave them me out of his own hands.

L. H. Steward. My lord says you brought the arms to him yourself, and gave them him out of your own hands.

L. *Forrester.* I got so many of them that I should not have made any distinction of his from the rest, but that I remember he gave me his arms out of his own hands, and desired me to give them to my lord Kimmergem.

L. H. Steward. You desired my lord Forrester to give them my lord Kimmergem.

L. H. Steward. Another question proposed is, whether my lord Wintoun did not give orders to his servant to bring the arms out of the stable, and to give them my lord Kimmergem?

L. *Forrester.* I believe he did bring them out of the stable.

L. H. Steward. My lord believes you did bring them out of the stable.

L. *Wintoun.* I desire he may be asked, whether I had a sword about me?

L. H. Steward. My lord Forrester, the question is, whether your lordship found a sword about my lord Wintoun?

L. *Forrester.* I did not see any sword that he had; he had a great coat on, and might have had a sword under that; but I saw none.

L. H. Steward. My lord Forrester, did the prisoner at the bar deliver himself and his arms to your lordship as one of those in the surrender?—L. *Forrester.* I took it so.

Sir *J. Jekyll.* We beg leave to call general Carpenter, and desire he may be sworn in his place, and give your lordships his evidence.

[General *Carpenter** was sworn in his place.]

Proclamation for silence as usual.

Sir *J. Jekyll.* Mr. Carpenter, please to give my lords an account when you came to Preston, and what happened there.

Gen. *Carpenter.* I came to Preston on Sunday the 13th of November last: the troops under Mr. Wills had been there the afternoon before. I got there about ten o'clock on Sunday morning, with three regiments of dragoons; and there had been no intercourse nor message passed before I came.

Att. Gen. Please to inform my lords what passed there after you came to Preston.

Gen. *Carpenter.* After I came, the rebels sent to know what terms they might expect, and were answered none but at discretion. They soon after sent out one captain Dalziel to desire a cessation till next morning; upon which I sent in colonel Churchill to tell them, I agreed to a cessation, provided they sent out an English lord and a Scots lord as hostages: I named my lord Derwentwater and my lord Kenmure. Captain Dalziel said he thought my lord Kenmure would not come out. I named then brigadier Mackintosh: he also thought he would not come out. I was unwilling to make great difficulties, it growing towards night; and said either of the Mackintoshes and an English lord: and he brought out my lord Derwentwater and col. Mackintosh as hostages, that they should make no attempt to escape, nor any works for defence in the town.

Att. Gen. Pray, Sir, acquaint my lords who you sent in with colonel Churchill?

Gen. *Carpenter.* Colonel Cotton.

Att. Gen. When did they agree to the surrender of the place?

Gen. *Carpenter.* Not till the next morning. The hostages were, that none should attempt to escape, nor any defences should be made in the town till the next morning, at which time they would determine whether they would surrender or not.

Att. Gen. I desire you to acquaint my lords, whether these were all the terms offered, or whether there was any hopes of mercy given them?

* See an account of him in the Biographia.

Gen. *Carpenter*. I gave them none at all myself, and it is very unlikely any body else should: I commanded in chief his majesty's forces there: nobody ought to have done it; and if any officer whatsoever took upon him so to do without my order or leave, it was very unanswerable by the rules and discipline of war; and what he cannot answer: I hope nobody did: I am sure I gave no such directions: colonel Churchill can acquaint your lordships whether I directed him to mention any other conditions to them than at discretion.

Sir *J. Jekyll*. Did you hear any other officer give them any hope or expectation of mercy?

Gen. *Carpenter*. No, I did not.

Sir *J. Jekyll*. If my lord Wintoun hath any questions to ask this honourable person, he may do it.

L. H. Steward. My lord Wintoun, now is your time if you will ask any question of general Carpenter.

L. Wintoun. Whether I was concerned in making any——

L. H. Steward. I don't hear the question —[Then the Clerk was sent down to take it in writing.]

[And the Question being brought up to the Lord High-Steward by the Clerk.]

L. H. Steward. The question my lord asks, is, whether he was concerned in making any capitulation, or knew any thing about it?

Gen. *Carpenter*. Not that I know of; it is impossible for me to know, except by hearsay: he was not the person treated with, I treated with my lord Derwentwater and one of the Mackintoshes, so that I know nothing of his being concerned in any manner of treaty.

L. H. Steward. You hear the answer.

Sir *J. Jekyll*. We beg leave to call general Wills.

L. Wintoun. I desire to ask my lord Forrester a question.

L. H. Steward. My lord Wintoun desires to propose a question to my lord Forrester.

Sir *J. Jekyll*. Though that be out of method, yet I do not oppose it.

L. H. Steward. Bring up the question. My lord, the question my lord Wintoun proposes is, whether he had any sword or arms when he first saw your lordship at Preston?

L. Forrester. I do not remember I had a sword from him; I cannot tell whether he had a sword about him, for he had a great coat on; but I remember I took none from him, I had only the two cases of pistols which he gave me.

L. H. Steward. He could not tell whether you had a sword about you, you had a great coat that he could not well see; but he remembers he took none from you, only the two cases of pistols which you gave him.

L. H. Steward. Who do you call next?

Sir *J. Jekyll*. My lords, we desire that general Wills may be sworn.

[He was sworn accordingly.]

Sir *J. Jekyll*, Mr. Wills, pray give my lords an account when you came before the town of Preston, and what happened there.

Gen. *Wills*. My lords, I had the honour to command the king's troops that attacked the rebels at Preston; I came before that town the 12th of November last about one o'clock, and ordered two attacks upon the town; that attack which leads to Wigan was commanded by brigadier Honywood, who beat the rebels from their first barricade, and took possession of some of the houses in the town; the other attack, which leads to Lancaster, was commanded by brigadier Dormer, who lodged his troops nigh the barricade of the rebels. The next day, about two o'clock, Mr. Forster sent out one Mr. Oxborough, an Irishman, offering to lay down their arms and submit themselves, and hoped that I would recommend them to the king for mercy; which I refused, and told them I would not treat with rebels, for that they had killed several of the king's subjects, and that they must expect to undergo the same fate; upon which he said, that as I was an officer, and a man of honour, he hoped I would shew mercy to people who were willing to submit: upon which I told them, all I would do for them was, that if they laid down their arms, and submitted prisoners at discretion, I would prevent the soldiers from cutting them to pieces till I had further orders, and that I would give them but one hour to consider of it; and sent him back again into the town to acquaint Forster of it; before the hour was expired they sent out Mr. Dalziel, brother to the earl of Carnwath, and he wanted terms for the Scots. My answer was, that I would not treat with rebels, nor give them any other terms than what I had before offered them: upon which it was desired that I would grant further time till seven o'clock next day, to consult the best method of delivering themselves up. I agreed to grant them the time desired, provided that they threw up no new intrenchments in the streets, nor suffered any of their people to escape, and that they sent out the chief of the English and Scots as hostages for the performance; and I sent in colonel Cotton to bring them out, who brought out the earl of Derwentwater and Mr. Mackintosh. The next day about seven o'clock Mr. Forster sent out to let me know, that they were willing to give themselves up prisoners at discretion, as I had demanded. Mr. Mackintosh being by when the message was brought, said he could not answer that the Scots would surrender in that manner; for that the Scots were people of desperate fortunes, and that he had been a soldier himself, and knew what it was to be a prisoner at discretion; upon which I said, Go back to your people again, and I will attack the town, and the consequence will be, I will not spare one man of you. Mackintosh went back, but came running out immediately again, and said, that the lord Kenmure, and the rest of the noblemen, with his brother, would surrender in like manner with the English.

Sir *J. Jekyll.* When the attack was made by the king's forces, whether any, and how many were killed?

Gen. *Wills.* I believe between sixty and seventy, but few of the horse; there were killed and wounded about a hundred and thirty.

Att. Gen. If you please to acquaint my lords, whether any of the rebels came and treated with you, or if you gave them any encouragement to hope for mercy?

Gen. *Wills.* All the terms I gave them was, that I would save their lives from the soldiers until further orders, if they surrendered at discretion; I desire to explain the meaning of surrendering at discretion, which is, then it is in our power to cut them all to pieces; but I would give them their lives till further orders; for I could have cut them to pieces immediately, after they are made prisoners at discretion, by the rules of war; and if they did not comply, I would renew the attack and not spare a man.

L. H. Steward. You told them, that if they did not comply you would renew the assault?

Gen. *Wills.* Yes, and not spare a man of them.

Sir *J. Jekyll.* Did you give your officers any directions to give any other terms?

Gen. *Wills.* No, I did not.

L. H. Steward. Then you gave no directions to any other officer to give other terms than you yourself had offered?

Gen. *Wills.* No, I did not.

Mr. *Cowper.* Was there any other but these two, colonel Churchill and colonel Cotton sent in by you, or by general Carpenter?

Gen. *Wills.* Yes, colonel Nassau, to bid our own people forbear firing.

Mr. *Cowper.* Had colonel Nassau any authority to treat?

Gen. *Wills.* No; he went in only to bid our troops to forbear firing, and order colonel Cotton to come out with the hostages.

Sir *J. Jekyll.* You say the rebels desired you to recommend them to the king's mercy. Who made that proposition?

Gen. *Wills.* One Oxborough.

Sir *J. Jekyll.* Had you any other proposition by any other?

Gen. *Wills.* Mr. Dalziel, brother to my lord Carnwath, for the Scots. I refused him likewise, and told him I would treat with no rebels, nor give them any quarter.

Sir *J. Jekyll.* If my lord at the bar will ask this honourable gentleman any question, now is the time.

L. H. Steward. My lord Wintoun, the clerk is sent down to you again; if you have any question he will take it.

[The Clerk returned with the Question to my Lord High Steward.]

L. H. Steward. The question my lord proposes to general Wills is, whether you, general Wills, gave any summons to surrender before you made the first attack; or if you did not make the attack without any summons at all?

Gen. *Wills.* When I was viewing the town they shot two of my dragoons, and I did not summons them.

[Another Question taken by the Clerk and brought up.]

L. H. Steward. Another question my lord desires to be asked is, whether you offered to prevent the forces from falling upon the gentlemen at Preston, provided they surrendered at discretion?

Gen. *Wills.* Before ever I had drawn up the troop———

L. H. Steward. The question is, whether you offered to prevent the forces from falling upon the gentlemen at Preston, provided they surrendered at discretion?

Gen. *Wills.* Yes, my lords, I did hinder the troops from falling upon them after they offered to surrender.

[Another Question brought up by the Clerk.]

L. H. Steward. General Wills, my lord desires you may be asked, what you know, or have been informed of his lordship's being against coming to England; or of my lord's being against fighting with any of yours, or general Carpenter's troops?

Gen. *Wills.* I never knew my lord Wintoun, nor saw him till four days after he was taken at Preston, so that I can say nothing to that I do not know any thing of.

L. *Wintoun.* I desire general Carpenter may be asked the same question.

L. H. Steward. Do you know any thing, or have heard that my lord Wintoun was against coming into England, or fighting the king's forces?

Gen. *Carpenter.* My lords, I heard that at Jedburgh they held a council of war, the chief officers, &c. this is only hearsay, I speak not of my own knowledge.

Sir *J. Jekyll.* For the sake of evidence it is incumbent on us to desire that my lord confines himself to ask the general what he knows, and not to what he heard said.

Att. Gen. We have two witnesses more, the colonels that were sent into the town by the two generals, colonel Churchill and colonel Cotton.

Colonel *Churchill* sworn.

Mr. *Cowper.* The question proposed is, whether you was sent into Preston, and by whom?

Col. *Churchill.* I came up to Preston on Sunday morning, under general Carpenter's command, about ten o'clock; about one they sent to capitulate; about five I was sent in by general Carpenter, their request being, that they might have time till next day to consider whether they should surrender or not. My directions were, they should have that, upon condition they sent out hostages that none of them should attempt to escape, and that no defence should be made in the town. The people named to me by general Carpenter were my lord Derwentwater or my lord Widdrington,

and my lord Kenmure or Mackintosh was mentioned for the Scots. I directed them to send the hostages to me. They could not find my lord Derwentwater nor Widdrington, and Mackintosh was gone to bed. A little before eight I went with them, and told them the terms I was to deliver to them, that they were to throw up no works to fortify themselves, and should answer for the people, that none of them should escape. My lord Derwentwater and Mackintosh went out with me: I carried them to the two generals there, and at seven o'clock next morning they surrendered themselves.

Mr. *Cowper*. Please to give me leave to ask you, whether you had any commission from the general that sent you into the town, or whether you of yourself, without such commission, gave them any hopes of mercy?

Col. *Churchill*. I had not any power to do it, and was so far from doing it, that I do not remember a single syllable was mentioned either on our side or theirs about it.

Mr. *Cowper*. Did you at any other time hear any other officers give them such assurance?

Col. *Churchill*. I never heard a single word like it.

Att. Gen. Who did you treat with?

Col. *Churchill*. The body I treated with carried me to Mr. Forster, and then to my lord Kenmure. I delivered my message to Mr. Forster. I did not know any Scots lord but Kenmure.

Att. Gen. Who was present besides my lord Kenmure?

Col. *Churchill*. I saw a great many, but I did not know particularly any.

Att. Gen. The next is colonel Cotton, who was sent in by general Wills. We desire colonel Cotton may be sworn. [He was sworn accordingly.]

Att. Gen. We desire to ask colonel Cotton, whether he was sent into Preston by general Wills, and what instructions were given him when he went in?

Col. *Cotton*. I was sent into the town by general Wills at their desire, they having terms to offer: I told them we could give them none; they urged they had disputes amongst the Scots and English, and desired till the next morning to reconcile them. General Wills sent me again into the town, to allow them that time, provided that the lords would give their words that they would throw up no works for their defence from that time, and do their utmost that none of their people should make their escape; and the lords did give their words; and the lord at the bar was present.

Att. Gen. I desire you would acquaint my lords upon what terms they surrendered.

Col. *Cotton*. I had no power from Mr. Wills to promise them any terms, nor I did not.

Sir *J. Jekyll*. Did you acquaint them you had no power to offer them any terms?

Col. *Cotton*. I did.

Att. Gen. Who did you acquaint?

Col. *Cotton*. All the lords, and the people that had any influence over the common men.

Sir *J. Jekyll*. Was the noble lord at the bar amongst them?—Col. *Cotton*. He was.

Sir *J. Jekyll*. Was there any overtures made of obtaining the king's mercy?

Col. *Cotton*. I had no such order from Mr. Wills, and I did not offer it neither directly or indirectly.

Att. Gen. My lords, I think it hath been desired to call brigadier Munden, who speaks only as to the attack; and I think, my lords, if this evidence need to be corroborated, we shall desire to call another evidence who was with general Wills all the time the overtures passed.

Sir *J. Jekyll*. My lords, if the lord at the bar hath any question to ask colonel Cotton, we desire he may be indulged.

L. *Wintoun*. I would know whether they did not take prisoners and kill them, notwithstanding the capitulation?

L. H. Steward. The question my lord desires may be asked is, Whether you did not take prisoners and kill them, notwithstanding the capitulation?

Col. *Cotton*. My lords, upon my coming out of the town, though the lords had engaged to prevent any of their people making their escape, we were alarmed with an account that several were attempting it, and about six of those who were endeavouring to escape were cut to pieces. Upon this breach of their parole, colonel Churchill and myself were sent in to demand hostages, and brought out lord Derwentwater and Mr. Mackintosh.

Att. Gen. We desire brigadier Munden may be sworn. [He was accordingly called and sworn.]

Att. Gen. We desire brigadier Munden may be asked whether he was sent with these two colonels into the town, and what directions were given them?

L. H. Steward. You hear the question, please to give your answer.

Brigadier *Munden*. I humbly apprehend I am called to give some account of the attack at Preston, which I will do in as few words as I can. I am first to tell your lordships, after the rebels demanded an audience of general Wills, their first demand was for terms: The answer they received was, that general Wills would not treat with rebels, but if they surrendered as prisoners at discretion, they should have their lives spared until his majesty's pleasure was known. They asked if those were the only terms; it was answered, Yes. Afterwards this gentleman went into the town, who had an hour's time allowed him to consider of it. I remember his insisting upon terms: but all the answer Mr. Wills gave them was, If he had inclination, he had no power to give them any, otherwise than saving their lives till his majesty's pleasure was further known. If they expected other terms, they might return into the town immediately, and he would attack them and cut

them to pieces. After this the gentleman went into the town, my lord Derwentwater and Mr. Mackintosh came out to us. Mr. Mackintosh and my lord Derwentwater, and I heard them frequently repeat their request to the general for terms, and I heard Mackintosh give a particular account of the bravery and hardiness of their troops. Mr. Wills told him he might have proved and tried them if he had pleased, and then it would have been seen, whether the king's troops, or a parcel of rebels, would have acted the braver part. Mr. Wills received them with the utmost detestation and contempt, and gave them no hope of mercy either directly or indirectly.

Att. Gen. Did you ever hear any other of the officers offer them any other terms?

Brig. *Munden.* No, I did not hear any. I heard the instructions that were given to col. Cotton by general Wills, and when Mr. Cotton came out of the town the third time, which was when he went to take their parole of honour.

Sir *J. Jekyll.* Did my lord Wintoun come to give his parole?

Brig. *Munden.* When colonel Cotton came out, I very well remember he said he had received his parole of honour among the rest.

Sir *J. Jekyll.* If my lord at the bar hath any mind to ask this honourable person, brigadier Munden, any further questions, we have done with him.

L. H. Steward. My lord Wintoun, do you ask this witness any question?

L. *Wintoun.* No.

Sir *J. Jekyll.* We that are entrusted by the House of Commons have no more evidence to offer to your lordships.

L. H. Steward. My lord Wintoun, the gentlemen of the House of Commons have done with the evidence they proposed to call against you; therefore it is your lordship's time to open what evidence you have, or if you have made any observations on the evidence given against you, to deliver them, or to call your own witnesses—take your own method.

[Proclamation was made for silence as usual: and after some pause.]

L. H. Steward. My lord Wintoun, I acquainted your lordship that the gentlemen of the House of Commons, who manage the evidence to support the Impeachment, have done with giving their evidence; they design to give no more against you; therefore this is the time that is proper for your lordship to make your Defence; you are to do it in your own method, either by calling your witnesses, or making such observations in your Defence as you think proper.

L. *Wintoun.* Please to allow me some time, for my witnesses are not yet come. I have used all possible endeavours to get them, please to allow me till this day month until they come up. It will signify nothing to examine any witnesses after I am dead. I never saw my counsel but once, that they might instruct me what I have to say. My lords, I am informed they will be here some time next week.

L. H. Steward. What your lordship said is not heard.

L. *Wintoun.* I said I never spoke to any of my counsel, and that but once I have sent to my counsel; I never saw them.

[Proclamation for silence was made as usual.]

L. H. Steward. My lord, offer what you have to say now, while the Court is in silence.

L. *Wintoun.* My lords, the most material of my witnesses are not come up, they will be here some time next week; I have not talked to my counsel.

L. H. Steward. Your most material witnesses are upon the road, you desire some time till they come up; the effect of your Petition to the House of Lords, that is what you offer again.—L. *Wintoun.* Yes, my lords.

Att. Gen. We think it our duty to acquaint your lordships, that what that noble lord insists upon now is out of time. If he had any reasons to offer to defer the trial, he knew the proper time and place. Our duty is to let your lordships know, that when the evidence for the prosecution is given, the prisoner is not to have time to delay the proceedings, not any longer time. He ought to have applied before. We must submit it to your lordships.

Mr. *Cowper.* This request of his lordship, the prisoner at the bar, seems to concern the methods of justice, and is, we think, of great consequence with respect to the Commons. My lords, we should have been very far from pressing to bring on his lordship's trial sooner than might have been thought consistent with the rules of justice: but when we consider the time your lordships have allowed him upon several applications he has made to your lordships for that purpose; when we all know he has had notice, ever since he was seized and made prisoner at Preston, that a Defence would be necessary, and that it concerned him to provide for it; when we reflect how long it is since the Commons exhibited their Impeachment against him, it is surprizing after all to find his lordship allege, that he hath not had time to bring up his witnesses. With what view his lordship is advised to make this Defence may be easily explained: it is, my lords, to move the compassion of the people, and, I fear, to traduce the justice of your lordships' proceedings. Surely it must be confessed, that he hath had more than time sufficient, more than any one in the like circumstances hath been allowed by your lordships' great indulgence; and yet at last to have nothing to offer, but that his witnesses are not come, without attempting to produce one single witness to prove that he has, or expects any one witness to appear for him.

My lords, the stated rules of proceeding in trials of this nature ought to be ever sacred; and I do not know that any one prisoner hath a right to be indulged in methods unknown to the constitution.

My lords, I believe, when a prisoner in-

peached by the Commons puts himself upon his Defence, and is brought upon his trial, there ought to be no interruption or delay whatsoever. Sure I am, it is inconsistent with the proceedings of all other courts of justice.

Your lordships, as we are informed, lately denied the prisoner any further time; and if it was then thought not proper to be granted, certainly now he hath put himself upon his trial, and stands upon his Defence at your lordships' bar, he shall not be indulged to making the same request.

My lords, whatever compassion we may have for this unhappy lord, yet the Commons, when they reflect that the methods and forms of justice are essential to justice itself, they then think themselves obliged to oppose a new attempt, and hope the trial shall proceed.

L. Wintoun. My witnesses are not come up. They will be up about Monday or Tuesday next. I have had no longer time than since the 10th of February last to bring up my witnesses, when it was very bad travelling.

A motion was made to adjourn.

L. H. Steward. My lord Wintoun, your lordship hath heard the Commons oppose your request: you have heard the reasons given for such opposition. Doth your lordship, having heard the reasons, yet insist upon it, or do you withdraw your request?

L. Wintoun. I insist upon it, my lords.

Then the House was adjourned to the Chamber of Parliament.

And being returned in about an hour, and the House resumed, and proclamation made for silence as usual.

L. H. Steward. My lord Wintoun, I am commanded by the Lords to let you know, that they have considered your request, and that they are of opinion it is not now consistent with the rules of justice to allow you further time for sending for your witnesses: therefore you are to proceed in your Defence. I am likewise to acquaint you, that in respect to the lowness of your voice, the Lords have ordered a fit person to stand by you (after he is sworn) to report truly to their lordships what you say during your trial.

Is it your lordships' pleasure that one of your lordships' clerks be appointed to stand by and report to your lordships?

Lords. Yes, Yes.

A Clerk was sworn to make true report; but my lord Wintoun began to speak so very low, as scarce any could hear. Whereupon,

Sir *J. Jekyll.* My lords, I perceive it is your lordships' pleasure to indulge the lord at the bar, to have a person sworn to report truly to your lordships what he shall say in his Defence; but it is not your lordships' intention that the lord at the bar should speak so low, as it is impossible for us or any near him to hear what he says.

L. H. Steward. My lord Wintoun, speak as loud as you can, so as the managers may hear; he is only to help your voice, so as their lordships may hear.

Clerk from L. *Wintoun.* I think it very hard, and great injustice, that I should not be allowed time to make my own Defence; and that my witnesses should not come up; and that I should be tied down to a foolish form, which I am not accustomed to, when I am in danger of my life.

Then the House was adjourned to the Chamber of Parliament.

The Second Day.

Friday, March 16.

L. H. Steward. The House is resumed. Do your lordships give the judges leave to be covered?

Lords. Ay, ay.

Proclamation made for silence, and another to bring forth the prisoner, as usual.

The Prisoner brought to the bar, and kneels.

L. H. Steward. My lord Wintoun, you may rise.—My lord Wintoun, you may proceed upon your Defence.

The Clerk ordered to report as before.

L. H. Steward. I again remind your lordship, you are to speak in your Defence as loud as you can; if your voice is not heard, he is ready to report to the lords what you say; but you must speak as loud as you can.

Clerk from L. *Wintoun.* My counsel is ready here to speak for me.

L. H. Steward. My lord, I would not presume to make an answer, but that it is known law, that undoubtedly your lordship cannot have counsel, by the law of the land, to speak in your Defence, unless it be to matter of law; for the law supposes every man sufficient to answer for himself as to matter of fact.

Clerk from L. *Wintoun.* My lords, I am not accustomed to speak on such occasions; therefore I hope your lordships will allow my counsel to speak for me.

L. H. Steward. My lord, I must acquaint you, that the law in this case admits of no exception, but holds to the general rule.

Clerk from L. *Wintoun.* My lords, I do not understand the law; I am perfectly a stranger to the customs of the House, therefore hope your lordships will allow my counsel that know them to speak for me.

L. H. Steward (to the Clerk.) You let your voice fall.

Clerk from L. *Wintoun.* I am not accustomed to the practice of this House; therefore I desire that your lordships would please to allow other people to speak for me that understand them.

L. H. Steward. My lord Wintoun, your counsel are not to be allowed to speak for you, as to those things that are matter of fact, in an impeachment of high treason, but to what

is matter of law; and I believe if you ask your own counsel they will tell you, as the law stands, they cannot be heard for you here as to matter of fact.

Clerk from L. *Wintoun.* The counsel will inform your lordships of the matter of fact, and they know how better to express it than I do.

L. H. Steward. My lord Wintoun, have you any witnesses to call in your Defence?

Clerk from L. *Wintoun.* I told your lordships yesterday, my most material witnesses were not yet come up.

L. H. Steward. My lord, I acquainted your lordship yesterday, and now would remind you of your own Petition exhibited to the House of Lords, wherein you acknowledge that a great many of your witnesses were come up; those witnesses were arrived, you only then pretended four were not yet come. Doth your lordship design to make no manner of use of those great numbers of witnesses that you admitted were come?

Clerk from L. *Wintoun.* Without those they would not be of such an effect. They would serve for nothing without those witnesses coming.

L. H. Steward. My lord Wintoun, your lordship will please to observe the Lords wait with great patience, to see if your lordship would be better advised, and go into your Defence.

Clerk from L. *Wintoun.* I do not really know, my lords, what to say for it, for I do not understand the proceedings of this House. It was always the custom in any court where I was, for people to be allowed to speak, or the counsel be allowed to speak for me, for I am not accustomed to speak any manner of way in my own defence, therefore I hope you will allow my counsel to speak for me. My counsel have a point of law to speak to; they say so, but I know nothing of it.

L. H. Steward. My lord Wintoun, your counsel have had access to you; and though your lordship cannot speak and argue to the point of law, cannot your lordship propose what the question is?

Clerk from L. *Wintoun.* It is impossible for me to do a thing I do not understand; I do not know what the point of law is, no more than a man that knows nothing about it.

[When some laughed.]

L. *Wintoun.* I am only speaking in my own defence; I do not expect to be laughed at.

L. H. Steward. I think his lordship does observe well; I hope every one will forbear that. —Will not your lordship be pleased to name what matter the question concerns?

Clerk from L. *Wintoun.* It will be something about the trial; no doubt something of what the common people have been speaking about. It is, no doubt, in answer to the Managers of the House of Commons. I have not seen my counsel since I was last here in the House; I have been kept close prisoner all the time, and nobody come near me; nor had I any time to speak with any body, particularly with my counsel; so that I have not had time to be exactly informed of all the points of law they have to plead. The counsel will tell themselves what point of law they have to plead.

L. H. Steward. My lord Wintoun, regularly you should propound your own question before your counsel speak. Before it appears to be a point of law, it is not fit for your counsel to be heard.

Clerk from L. *Wintoun.* It is impossible I should direct a counsel, I, that do not understand law: I cannot introduce a point of law; my counsel will speak to the point of law.

L. H. Steward. My lord Wintoun, did not you speak to your counsel last night?

Clerk from L. *Wintoun.* I could not.

L. H. Steward. Why?

Clerk from L. *Wintoun.* Because it was late, when I went from hence; and your lordships know I am a close prisoner in the Tower; and was locked up and could not see them. I see nobody but the guards.

L. H. Steward. Hath not your lordship several times seen your counsel, as often as you required an order for so doing?

Clerk from L. *Wintoun.* I never saw my counsel but once, before I gave in my Answer.

L. H. Steward. Did you desire to see them oftener?

Clerk from L. *Wintoun.* My lords, my solicitor spoke to them; and my witnesses not being come up, it was needless for me to speak to my counsel, before that they might know what the witnesses had to say, and so might draw up the state of the question. I did not doubt but the Lords would have given me more time; and therefore I was not so desirous to see my counsel as I would have been, if I thought I should have been so much crampt in time.

Mr. *Cowper.* My lords, I had the honour to receive the commands of the Commons, to reply to his lordship's Defence, and it was reasonable to expect that the prisoner, having pleaded Not Guilty to the Impeachment, would have attempted to give some evidence in support of his plea; but since it seems to be his lordship's resolution not to enter into a Defence, I think it my duty to say something to your lordships upon this unexpected occasion. Such is the treason, and so full the evidence to prove it, that I think his lordship's behaviour, unaccountable as it is, more to his purpose than any other could have been. My lords, I am very unwilling to speak my own private sentiment of his lordship's present conduct, although the observations I could make arise out of his lordship's Answer to the Impeachment: whoever shall read and consider it, will find my lord Wintoun not denying, but confessing the several overt acts of treason laid to his charge, and then drawing a false conclusion, that he is Not Guilty, however, of the treason whereof he is accused. He denies that what he did was

done with a traitorous intention, and says very emphatically, that the pure streams of loyalty, which have always run in the blood of his ancestors, are derived to him uncorrupted; and thus, my lords, a Popish Pretender being the object of his lordship's loyalty, he thinks he may be guilty of the whole Impeachment without being a traitor. This is the true state of the case. It seems to me, his lordship is determined to maintain his point; and how far he may think it proper to acknowledge your lordships' jurisdiction I know not. My lords, as to the Impeachment which the Commons with great justice have exhibited against this prisoner, your lordships have observed, that the several treasons therein contained have been fully proved; I am unwilling, in a case so plain, and where no defence has been, or can be made, to waste your lordships' time. Your lordships have heard, in the course of the evidence which we have produced, that this lord departed from his seat of Seaton-house with about 14 of his own servants, free and unconstrained; that he joined others of the rebels at Moffett, at which place his lordship was pleased to form a troop, which from thenceforth was called the earl of Wintoun's troop. The prisoner had the command of it, and for fear his zeal for the Pretender should pass unobserved, his own servants rid in his own troop in his own livery; and I may add, that it appears his lordship's troop was paid after the rate of 2*s. per diem* each man, by his lordship's order, and with his own money. From the town at Moffett, which I mentioned, your lordships had an account of many marches and counter-marches; his lordship and the rebels under him ever were increasing in their numbers; every where declaring and proclaiming the Pretender to his majesty's crown, as king of these realms. And, my lords, I may venture to say it appears through the whole course of the evidence, that no one was more zealous and active than the prisoner. My lords——

L. *Guilford.* I am very sorry to interrupt that gentleman, but I think it proper, before the House of Commons sum up their evidence, to move your lordships to adjourn to the House of Lords.

Then the House was adjourned to the Chamber of Parliament; and after about half an hour returned, and the House was resumed.

And a proclamation for silence being made as usual,

L. *H. Steward.* My lord Wintoun, I am ordered by their lordships to acquaint you, that they are yet ready to hear any thing that you have to say in your Defence by way of observation upon what hath been proved against you, or alleged against you, or otherwise; they are likewise ready to hear any witnesses you are pleased to call or produce; but then I am to acquaint your lordship, that if you neglect this opportunity now given you, then it is their lordships' pleasure that I should signify to the Managers of the House of Commons, that they should go on to their Reply; and if such Reply be made, your lordship hath no further opportunity to allege any thing, or to prove any thing. This notice is ordered by their lordships to be given you. I am likewise to acquaint you, that it is their lordships' opinion, as I before told you, that if you have any question of law to be spoken by your counsel, their lordships cannot admit any other form, but that you should propound it to their lordships yourself.

Clerk from L. *Wintoun.* I believe my counsel, my lords, have something to say in answer to what the Managers have said. My lords, the gentleman who was present, knows they would not let me know what they had to say.

Clerk. He says I was by when his counsel said so.

L. *H. Steward.* My lord, if your lordship hath any notes or papers you may help your memory by them in your Defence. Read or look upon them.

Clerk from L. *Wintoun.* I shall read it as I can, and you will excuse it if I do not do it right as I should do.

Lord *Wintoun* reads, and the Clerk repeats.

The counsel have a point of law arising from what hath been passed in the House, to shew that he is such a person as is not capable of committing the treason laid in the impeachment. I plead Not Guilty, and this alleges the same. I say I am Not Guilty, and the Paper says it will demonstrate I am not. (The Paper read again and repeated as before.) The counsel have a point of law arising from what hath passed in the House, to shew that he is such a person, that is not capable of committing the treason laid in the Impeachment.

Clerk from L. *Wintoun.* I do not understand law, and how should I introduce a point of law?

L. *H. Steward.* My lord Wintoun, if your lordship doth not proceed to make a Defence, and to call your witnesses, I have already acquainted you, and I believe I shall be excused for doing it a second time, that I shall signify to the managers of the House of Commons to reply, after which your lordship cannot have them examined.

Clerk from L. *Wintoun.* I heard your lordship what you said, but I do not understand what is meant by it.

L. *H. Steward.* They may proceed to say what they think proper touching that sort of Defence your lordship is making, to answer what they have already said and proved against your lordship; after they have said and done this, the lords will not allow you to speak afterwards.

Clerk from L. *Wintoun.* The counsel desire to be heard, since they have written a paper, to be heard on that paper.

L. *H. Steward.* The paper is allowed to help your own memory, but you must not give

in any paper as written by your counsel, nor mention it as such.

Clerk from L. *Wintoun.* I desire my counsel may be heard on the point of law contained in what I call the paper. I desire my counsel may be heard to the point of law, which I read out of the paper. I desire my counsel may be heard to the point of law, which they urge they have to say.

L. H. Steward. My lord Wintoun, you have by the help of a paper propounded that which you call a point of law. Their lordships have heard what you have propounded. I do not find any motion is made to adjourn, to consider whether such a point is fit for your counsel to be heard to, that is, whether it is a point of law: If there be any doubt, you will presently see it by the effect, by such a motion as I have mentioned.

[After some pause.]

L. H. Steward. If your lordship doth not proceed, I must intimate to the managers of the House of Commons that they may reply.

Clerk from L. *Wintoun.* My lords, if your lordships will allow my counsel to be heard on the point of law I have given in.

L. H. Steward. My lord, I think I may now presume to tell you, that I humbly apprehend it is no point of law which you propose.

Clerk from L. *Wintoun.* I am not a judge of a point of law, for I do not understand law, nor never did.

L. H. Steward. My lord Wintoun, the same matter must not be drawn over and over again. If your lordship doth not proceed to something proper for your Defence, I must signify immediately to the managers that they may reply.

Clerk from L. *Wintoun.* If your lordships please to hear the counsel, they will tell you what it means. The counsel dare not speak till they be desired.

L. H. Steward. Gentlemen of the House of Commons, you may reply.

Mr. *Cowper.* My lords, I shall avoid, as near as I am able, repeating any thing I have already said before your lordships' last adjournment. I was observing that the behaviour of the prisoner, my lord Wintoun, throughout all his conduct, during the whole progress of the rebellion, appeared in a quite different light to that in which he would now willingly appear: Your lordships find him, according to the evidence, at every false alarm very inquisitive to know the occasion; having assumed the command of a squadron, his lordship was instantly at his post, ready to receive and enconuter his majesty's forces, and the reverend Mr. Patten has done justice to his lordship's vigilance and courage upon this occasion; but it seems the alarms were both false: Hence we may observe, that alarms may be false, and dangers may be imaginary: which Mr. Patten, and men of his principles, would do well to reflect on at leisure. My lords, after great numbers of marches and counter-marches, during which his majesty's subjects were plundered, the public money seized, and taxes exacted from the people by force and violence. Your lordships have heard that the town of Preston was seized by this lord, and the traitors, his accomplices. At this place ensued a terrible slaughter of his majesty's faithful soldiers, men who deserved a better fate than to die by the hands of such perfidious rebels. But when the usual bravery of the king's troops prevailed, and there was nothing left but the undeserved hope of mercy, you find the prisoner amongst the rest surrendering his arms and his person to the discretion of his majesty's generals. The Commons cannot, my lords, but take a particular satisfaction in one incident, occasioned by this lord's putting himself upon his trial, which is, that it has administered to them a time and an opportunity, in the most public manner before this august assembly, to vindicate his majesty's generals from a malicious calumny suggested even by this lord, the prisoner, in his Answer to the Impeachment, and not only by him, but by the rest of his accomplices already attainted. It seems not to be accidental, that all the lords mentioned in the Impeachment should every one of them (false as it appears to be) allege that they surrendered, some say upon promises, but all agree upon hopes given of mercy, considering how fully it now appears, that there is not the least colour or shadow of truth to support this suggestion; it is no uncharitable reflection to say, that their lordships, I doubt, to supply the mischiefs their arms could not accomplish, were willing to assist their party, by furnishing them with an untruth to propagate. With what zeal and industry has it been accordingly propagated! I may take the liberty, I presume, to say, with the consent of this whole assembly, that it appears on the evidence to be utterly false; nay further, that the very reverse is true, the rebels would willingly have obtained a promise, or even a hope of being recommended, but the generals rightly told them, rebels deserved no mercy, nor would they treat with rebels of surrendering otherwise than at discretion. I cannot conclude without touching shortly upon a question which I observed his lordship to ask, during the course of the evidence; I think it was proposed to colonel Cotton, whether any of our men, as his lordship was pleased to express it, were slain during the time of the cessation of arms at Preston? Which, in fact, was true; and if it had been answered in the affirmative without explanation, I believe his lordship would have been gratified, by furnishing his friends with another story to propagate, which, well improved, might have lasted a good while; but when the witness (who, I presume, discerned the tendency and malignancy of the question) gave his answer, the case appears this; the rebels stipulate and agree (hostages being delivered) that no works shall be erected in the town during the suspension: that no person then in the town shall go out of it during the same time; in breach of which stipulation and

agreement, about six of the rebels attempt, sword in hand, to charge through the king's troops, in which attempt they fell, and if the king's troops had done less they had not done their duty. My lords, I thought it not improper to make some few observations upon the evidence; not that his lordship's Defence has made it requisite, but to answer, according to my power, the end of that trust which the Commons have been pleased to repose in me.

Sir *William Thomson*. My lords, I should think myself unworthy the honour of being allowed any share of your lordships' time; but as I was entrusted by the Commons to assist the learned gentleman who spoke last, in a reply to such defence as should be made by the noble lord at the bar, although no evidence has been produced by him, yet I must request your lordships' patience to make a few remarks upon the nature of this cause, as it stands before your lordships.

The Answer of the noble lord not being supported by evidence, ought to go for nothing; but since several matters are alleged in it to mitigate, if not to justify his proceedings, which are falsified by our evidence, I beg leave to take some notice of it.

I must agree with the noble lord, that "it will be very pleasing to that honourable assembly who are his accusers to have an innocent man acquitted, as well as a guilty one condemned." Nor can I differ with him where he asserts, "That to be taken with persons in arms against the government, is a reasonable presumption of his guilt, and a very just foundation to accuse him with the rest so taken; but that the circumstances of his case appear so different from the others, as to require your lordships distinguishing him in judgment." I cannot say, that any thing has been offered to your lordships which makes room for such a distinction.

This noble lord is pleased to give an account of what happened to him about eight years ago, when he endeavoured to avoid the suspicion of the government; he mentions the ill usage of the militia and the king's troops, and several transactions, viz. rifling his house, and committing disorders there, without telling when they happened, or from whom; he is pleased to say that he was unfortunately driven into the company of some of the persons mentioned in the Impeachment; that he joined them without any intention to assist their designs; that he never meant to leave his own country; that he was ignorant of the purposes of his companions; that he was constrained to keep them company, but never joined in any act of hostility, or countenanced or abetted them therein.

My lords, the evidence against this noble lord sufficiently explains how far he abetted the undertakings of his companions.

It was proved to your lordships, that when he first came to join the rebels at Moffett, he brought fourteen of his domestics with him, most of them well armed and accoutred; that he came with them to a place of rendezvous, where were assembled the lord Kenmure, and about 150 horse; that from the time he joined them till he was taken, he marched along with them in a hostile manner through all the towns at the head of his troop that he had formed, and which he commanded upon all occasions; that he had also a squadron under his command and direction, to whom he gave orders, and was very ready to have disposed them to action, particularly on two alarms of the king's troops; that he assisted several times at the proclaiming the Pretender by the rebels in the towns where they passed through with his sword in hand; that he was with them at those towns where they seized the public money, the cannon, and other warlike instruments; and when he came to Preston, that in the preparations to resist the king's troops he was as active as any of the rest; and particularly in the church-yard, where the rebels were drawn together in order to that resistance, he had his sword and pistols with him, and was assisting in making the dispositions for engagement.

And for the constraint that is pretended, it is plain, that as he came in to the rebels in the manner I have mentioned without any force or compulsion whatever, so he continued all along with them, and gave them the best assistance he could, and was far from shewing any backwardness or uneasiness at their proceedings through the whole progress of this affair. He drank the Pretender's health, and the other usual healths among the rebels, viz. Success to their cause; and if he had not wished it, he might have left them whenever he would, if he had an inclination so to do; he did not want an opportunity, particularly at Langholm, when about 500 Highlanders went back to Scotland; before they went they suffered him to come to them (though they would not any other), that he discoursed them, and came back from them, and declared it was not his fault that they would not go along with him into England. My lords, whether the whole tenor of this proceeding does not manifest the intentions of this noble lord, and whether the evidence of these facts does not falsify every allegation in his Answer, by which he would justify himself, your lordships will easily determine.

The noble lord says further in his Answer, "That if he hath committed any act which by the rigour of the law may be construed high-treason, he hopes the innocence of his heart, and his ignorance of the law, will, by your lordships' intercession, render him an object of his majesty's mercy; which, he says, at the time of his surrender, he was encouraged to depend upon by his majesty's officers."

As to any assurances or encouragement to expect mercy upon the surrender, the direct contrary is fully made out, I dare say, to your lordships' entire satisfaction. And for your lordships' intercession, that is not the consideration now before you: the question is only,

Whether the witnesses have proved him guilty of the high-treason of which he is accused?

I find the noble lord cannot condescend to own the facts he is charged with to amount to this crime: he is pleased to say, "That he is descended from a noble family, in whose blood the streams of loyalty were always pure, never corrupted or polluted with treason or sedition; that he never degenerated from his loyal ancestors, so as to form or carry on any design to subvert or alter the constitution of this kingdom, but that he was always ready to sacrifice his fortune, and even his life for its preservation."

My lords, I could wish, for the sake of this unhappy lord, the object of your present consideration, that it were not too evident what constitution he meant to preserve, and for which he has ventured his life and fortune.

All mankind, who will not shut their eyes, must see that the purpose of this noble lord and his accomplices was to dethrone his most sacred majesty, our Protestant king, whom God and the laws have set over us, and in his stead to set up a popish Pretender to his crown, bred up in superstition, and under the maxims of tyranny and arbitrary power: the success of this design must necessarily have produced a most dreadful scene of blood and confusion; the life of our most gracious sovereign, the lives of all his royal family, your lordships and those other brave and honest Britons who would have stood in the defence of the religion, the laws and liberties of their country, must have been sacrificed to the rage and fury of popish bigotry, and to the insatiable cruelty of jesuits and priests, who, as we are Protestants, are our most implacable enemies.

Instead of the happiness we now enjoy under our most excellent form of government, where every thing that is dear and valuable to human nature is protected by the laws from the least violence or invasion whatever, what could this nation expect from popery and arbitrary power, but endless miseries and calamities, and the most abject slavery?

My lords, it is a melancholy reflection, that there should be any, who pretend to the name of Britons, who would engage in so groundless, so unprovoked, and, most properly called, so unnatural a rebellion; or that others should be so deluded or corrupted, as by their false and malicious insinuations, and by their vile calumnies on the best of princes, or by their avowed indifference towards him, to encourage that traitorous enterprize.

All such enemies to the welfare and prosperity of their country, ought to reflect, with the utmost shame and confusion, on the dismal prospect they were preparing for us by the natural tendency of their proceedings: and I cannot but think, that it must add to the affliction of this unfortunate lord who stands before this august judicature, while he reflects on the assurances given him of generous compassion as far as is consistent with the rules of justice, while he considers of that humanity and tender regard expressed towards him by that great and noble mind, who so justly represented all your lordships' sentiments, while he observes that care and concern shewn to him, that assistance granted him towards making his defence, and that his judges are so many noble peers, who can never be influenced to condemn the innocent, and who will be governed only by full proof and clear conviction: sure he must now reproach himself, when he thinks that he was about to subvert those very laws by which even his life, who has so transgressed, is thus protected.

My lords, I am here led to take notice also, that his most gracious majesty (against whom this unfortunate lord, with his associates, have so signally offended) hath been pleased to express his mild and gentle disposition, even to them his most inveterate enemies. It was an uneasiness to him that he could not distinguish the first years of his reign by the endearing marks of peace and clemency; it afflicted him that the calamities of his faithful subjects should require indispensable returns of severity.

I may presume your lordships' natural compassion would incline you to the same merciful dispositions; but the Commons are persuaded that your lordships will have some regard to the lives of those many brave and gallant men, who by the base methods of the rebels were murdered, and expired in their country's cause; that their blood demands the justice of that country in whose defence it was spilt; and the Commons are assured that your lordships must think that the public safety also requires your exemplary justice, more especially on the principal offenders; and that it is the most effectual method to prevent any future insurrections or disturbance of the public repose and tranquillity of the kingdom, and to render firm and lasting our present happy establishment.

Sir *J. Jekyll.* My lords, the gentlemen of the House of Commons have nothing more to offer to your lordships, but desire your lordships' opinion on this evidence.

[Then the House of Lords was adjourned to the Chamber of Parliament; and being returned, the House resumed, and proclamation made for silence as usual.]

Then the Lord High Steward being seated on the chair, placed as before mentioned, stood up uncovered, and beginning with the youngest peer, said,

Thomas lord Parker, what says your lordship, is George earl of Wintoun Guilty of the high-treason whereof he stands impeached, or Not Guilty?

Then Thomas lord Parker standing up in his place, and laying his right hand on his breast, said, Guilty upon my honour.

In like manner, the several lords after mentioned, being all that were present, answered severally, Guilty upon my honour.

Richard lord Cobham
Henry lord Carleton
Bennet l. Harborough
James l. Saunderson
Robert lord Bingley
Allen lord Bathurst
Thomas lord Mansell
Charles lord Boyle
Simon lord Harcourt
John lord Belhaven
William lord Rokb
John lord Gower
Maurice l. Haversham
Henry lord Herbert
John l. Ashburnham
Francis lord Guilford
Richard lord Lumley
Peregrine l. Osborn
Charles l. Cornwallis
John lord Colepepper
Charles lord Bruce
William lord Brook
James lord Compton
William l. St. John
Thomas l. Howard, of Effingham
Charles l. Fitzwalter
John lord Delawar
Peregrine lord Willoughby, of Eresby
Henry lord visc. Tadcaster
Henry lord visc. Lonsdale
Talbot lord visc. Longueville
Charles lord viscount Townshend
Lawrence lord visc. Say and Sele
George e. of Hallifax
John e. of Bristol
Heneage e. of Aylesford
Charles e. of Tankerville
Lewis e. of Rockingham
James e. of Carnarvon
Thomas e. of Strafford
Archibald e. of Ilay
Henry e. of Deloraine
Hugh e. of Loudon
Thomas earl of Haddington
John earl of Rothes
Hugh earl of Cholmondeley
Francis earl of Godolphin
John earl Poulet
John e. of Greenwich
Henry e. of Grantham
William e. of Jersey
Edward e. of Orford
George earl of Warrington
Rd. e. of Scarborough
Henry e. of Portland
Robert earl of Holdernes
Henry e. of Rochester
Daniel earl of Nottingham
Charles earl of Radnor
Richard earl of Burlington
Arthur earl of Anglesey
Edward earl of Clarendon
Thomas e. of Stampford
Charles earl of Manchester
George earl of Northampton
John earl of Leicester
Scroop earl of Bridgwater
Lionel earl of Dorset and Middlesex
Henry earl of Lincoln
Thomas earl of Pembroke
James earl of Derby
William marquis of Annandale
Thomas duke of Newcastle
Evelin duke of Kingston
Robert duke of Ancaster and Kesteven, lord great chamberlain
Henry duke of Kent
John d. of Roxburgh
James d. of Montrose
John d. of Montague
John duke of Buckingham and Normanby
John duke of Marlborough
Charles d. of Shrewsbury
Charles duke of St. Albans
Charles duke of Richmond
Charles duke of Somerset
Charles duke of Bolton, lord chamberlain of his majesty's houshold
William duke of Devonshire, lord steward of his majesty's houshold
Charles earl of Sunderland, lord privy-seal.

L. H. Steward. My lords, I am of opinion that George earl of Wintoun is guilty of the high treason whereof he stands impeached, upon my honour.

Proclamation for silence, and proclamation to bring forth the prisoner as usual.

L. H. Steward. George earl of Wintoun, the Lords have considered of the Charge, and the evidence given against you; and likewise of what you have said in your Defence, and of the whole matter as it hath been before them in this trial, and are of opinion that your lordship is Guilty, and have found your lordship Guilty of the high-treason whereof you stand impeached.

Is it your lordships' pleasure to adjourn to the chamber of parliament?—*Lords.* Ay, ay.

L. H. Steward. This House is adjourned to the chamber of parliament.

Then all the lords returned in the order before-mentioned to the chamber of parliament.

Third Day.

Monday, March 19.

Proclamation for silence, and proclamation for the prisoner to be brought to the bar as usual.

L. H. Steward. George earl of Wintoun, when you was last at this bar, I let your lordship know that your peers had found you guilty of the high-treason whereof you stand impeached, that is, in the terms of law, convicted you of high-treason. I am now to ask your lordship if you have any thing to offer why judgment of death should not pass upon you according to the law?

Clerk from L. *Wintoun.* My lord Wintoun saith his counsel have a point of law to offer to your lordships, to shew that he is such a person against whom, by law, judgment ought not to be given.

L. H. Steward. My lord, will your lordship state the point, upon which your lordship is advised that you are not such a person against whom judgment ought to be given?

Clerk from L. *Wintoun.* I do not know what your lordship means.

Sir *C. Phipps.* If your lordships' please, we have a point of law humbly to offer to your lordships, if——

Att. Gen. My lords, I hear a gentleman of the long robe offering to speak. I do humbly insist on it that they are not to speak, unless there be a point of law stated by the prisoner, and which your lordships shall think to be a point of law; we think it irregular.

Mr. *Cowper.* We apprehend the objection to that gentleman's being heard is so obvious, that we are surprized to find he should presume to speak without your lordships' direction so to do; he cannot but know that the prisoner is to propound the question in law; and if your lordship shall conceive it to be a point of law, proper to be argued by counsel, your lordships

will direct him to speak; but he ought not in any case to propound a question in law; nor when a question is propounded by the prisoner, to speak to it without your lordships' express direction.

Lord High Steward. Sir Constantine Phipps, you know the practice to be so, and the point must be first stated by the prisoner before you can speak to it.

Sir *C. Phipps.* My lords, if I had been heard but ten words more——

Sir *W. Thomson.* My lords, we humbly insist upon it that that gentleman be not heard one word more——

Lord *Ilay* moved to adjourn.

L. H. Steward. Is it your lordships' pleasure to adjourn?

Lords. Ay, ay.

L. H. Steward. This House is adjourned to the chamber of parliament.

The Lords went in their order to the chamber of parliament.

And after about half an hour being returned,

The House was resumed, and proclamation made for silence as usual.

L. H. Steward. My lord Wintoun, the Lords have considered of the matter which you have moved in arrest of judgment, which was to this effect, that you are not such a person as against whom judgment of death for high-treason ought to be pronounced. I am directed to acquaint you, that their lordships are of opinion it is matter of fact, and not of law; and that the Lords think you are such a person as against whom judgment ought to be given in this case. I am likewise ordered by the Lords to reprimand you, sir Constantine Phipps, for having, in a proceeding of this nature, presumed to be so forward as to speak for the prisoner at the bar before a point of law was first stated, and you had leave to speak to it; and your fault is certainly the greater for having presumed to do this to a matter, which you cannot but know is matter of fact, and that the law is not doubtful one way or other, the fact being supposed. My lord Wintoun, I am allowed again to ask your lordship, if you have any thing further to allege or move why judgment of death should not pass upon you according to the law?

Clerk from *L. Wintoun.* My counsel are ready to offer, in arrest of judgment, that the Impeachment is insufficient, for the time of committing the treason is not therein laid with sufficient certainty.

L. H. Steward. I think the matter moved by my lord is, that his counsel should be admitted to shew that the Impeachment is insufficient, in respect that the time therein is not laid with sufficient certainty. This I think is the matter moved. Will your lordships be pleased that the counsel have leave to speak?

L. H. Steward. Is it your lordships' pleasure that the counsel for the prisoner may be allowed to speak to this point?—*Lords.* Ay, ay.

L. H. Steward. I ask your lordships' leave to go nearer to the table.

[Which being done, proclamation for silence was made as usual.]

L. H. Steward. Gentlemen that are of counsel for the prisoner at the bar, you have liberty to speak to the point proposed.

Sir *Constantine Phipps.* May it please your lordships, we that have the honour to be assigned by your lordships as counsel in this Case, do humbly apprehend the Impeachment against the noble lord at the bar to be insufficient; it is so uncertain, that we (with the greatest submission) take it no judgment can be given upon it. My lords, we beg leave to take notice to your lordships, that in indictments, in the courts below, even for trespasses, the law requires the certain day when the offence is supposed to be committed to be alleged; and if a particular day be not laid, the indictment is insufficient. And if such certainty is requisite in offences of the most minute nature, it is much more so in capital crimes, and more still in offences of the highest nature, such as treason, with which this noble lord is charged.

My lords, there be two reasons why, in indictments for high-treason, a certain day should be assigned when the treason was committed.

One is for the advantage of the prisoner; that being apprised not only for the facts with which he is charged, but also of the time when those facts are supposed to be committed, he may be the better able to make his defence: it is possible he may have witnesses to prove he was at another place, and in another company, at the time when he is accused to have committed the treason, or may by other circumstances make his innocence appear.

The second reason is for the benefit of the crown, that it may be known to what time the forfeiture shall relate; for in treason the forfeiture relates to the time laid in the indictment; and if there be no precise time alleged in the indictment, the forfeiture can relate no farther than to the judgment.

My lords, the forfeitures in cases of treason are very great, therefore we conceive, with humble submission, that the accusation ought to contain all the certainty it is capable of, that the prisoner may not, by general allegations, be rendered incapable to defend himself in a case which may prove so fatal to him.

Our books, my lords, furnish us with many instances where indictments have been held to be insufficient for less faults than not specifying the day when the offence was committed; but in cases so plain, I will not trouble your lordships with citing authorities; for I believe there is not one gentleman of the long robe but will agree, an indictment for any capital offence to be erroneous, if the offence be not alleged to be committed upon a certain day.

My lords, an attainder upon an Impeachment subjects the offender to the same punish-

ment, the same forfeitures, as an attainder upon an indictment; and therefore I am at a loss to find out a reason why there should not be the same certainty in the one as in the other: if equal certainty be required in both, then we humbly submit to your lordships' judgment, whether this Impeachment be not erroneous and insufficient, in that there is no particular certain time alleged when the treason or the overt-acts were committed? The treason alleged is conspiring and imagining the death of the king, and the Impeachment sets forth, "That the conspirators, (and names them) as false traitors to his present most sacred majesty king George, the only lawful and undoubted sovereign of these kingdoms, having withdrawn their allegiance, and cordial love, and true and due obedience, which they, as good and faithful subjects, owed to his said majesty, did, in or about the months of September, October, or November, 1715, most wickedly, maliciously, falsely, and traitorously imagine and compass the death of his most sacred majesty." My lords, a prosecution by Impeachment is a proceeding at the common law, for *lex parliamentaria* is a part of the common law; and we humbly submit it to your lordships' consideration, whether there is not the same certainty required in one method of proceeding at the common law, as in another?

Your lordships observe with what uncertainty, as to the time the treason is alleged. It is said to be in or about the months of September, October, or November 1715. Who is able to say to which of these months, much less to what day of either of these months, the forfeiture shall relate? And how is it possible for the noble lord, the prisoner at the bar, to make a defence to a charge so general, unless he bring for witnesses all those persons with whom he has had any conversation during those three months at least?

My lords, the overt-acts are alleged with the same insufficiency and uncertainty as the treason itself is; for in charging the first overt-act, which is conspiring to levy war and to depose the king; it is said, "That for accomplishing and executing their said traitorous purposes, they the said James earl of Derwentwater, &c. did, in or about the said month, or some of them, and at divers other times, and at divers other places within this kingdom, wickedly and traitorously agree, confederate, &c. to raise, excite, and levy, within the counties of Teviotdale, Northumberland, Cumberland, and the county-palatine of Chester, and elsewhere within this kingdom, a most cruel, bloody, and destructive war against his majesty, in order to depose and murder his sacred majesty, and to deprive him of his royal state, crown and dignity." My lords, can any thing be more uncertainly alleged, than to say that the conspirators did, in or about the said months, or some of them, and at divers other times, and at divers other places within this kingdom, confederate, &c. to levy war within the counties of Teviotdale, Northumberland, Cumberland, and county-palatine of Chester, and elsewhere within this kingdom?

The next overt-act, which is actually levying war, is not laid with greater certainty; for the Impeachment sets forth, "That the said earl of Derwentwater, &c. their accomplices and confederates, in or about the months aforesaid, in the counties aforesaid, or some of them, did gather together great numbers of his majesty's subjects, and with them did assemble in a warlike and traitorous manner, in order to raise tumults and rebellion within this kingdom; and having procured great quantities of arms, ammunition, and warlike instruments, at the times and places aforesaid, or some of them, did form and compose, or did assist in forming and composing an army of men, consisting of his majesty's liege subjects, in order to wage war against his said majesty, for and in behalf, and in favour of the said Pretender to the crown of these realms; and at the time and times, and places aforesaid, and at divers other times and places within this kingdom, the said conspirators did levy and raise war and rebellion against his most sacred majesty," &c.

The next overt-act is proclaiming the Pretender, which is more uncertain than any of the other; for the Impeachment sets forth, "That the aforesaid conspirators, during their march and invasion aforesaid, in open defiance of his most sacred majesty's just and undoubted title to the imperial crown of these realms, did wickedly and traitorously cause and procure the said Pretender to be proclaimed in the most public and solemn manner as king of these realms."

Here is no certain time or place alleged when or where the Pretender was proclaimed, but only that it was during their march and invasion.

The last overt-act seems to be laid with greater certainty than the rest; for it is said, "That the conspirators did, on or about the 9th, 10th, 11th, 12th, or 13th of November aforesaid, traitorously seize and possess themselves of the town of Preston, in the county palatine of Lancaster, against his majesty, and did then and there, in a warlike and hostile manner, levy war, oppose, engage, and fight against his majesty's forces, and did then and there cause and procure a miserable and horrid slaughter and murder of many of his majesty's faithful subjects." Here indeed are particular days mentioned, but then the words 'or about' leave it at large, for no man can tell how many days may be included in these words 'or about'. We humbly apprehend that a charge of this high nature ought not to be alleged with such uncertainty, and that the Impeachment is as erroneous as an indictment drawn in this manner would be; this being a proceeding of the same nature, and according to the course of the common law.

My lords, I do not pretend any great skill in parliamentary proceedings, but presume to say that in my little experience in business in other

courts, I never saw a charge exhibited against any one that was laid in so uncertain a manner, unless in libels in the ecclesiastical or admiralty courts, which cannot in the least influence the case now before your lordships; this (as I have observed) being a proceeding according to the course of the common law.

Upon the whole matter, I humbly submit to your lordships' judgment' whether, for the reasons I have offered to your lordships' consideration, the Impeachment is not erroneous, and whether your lordships will think fit to proceed to judgment against the noble lord, the prisoner at the bar, upon an impeachment so uncertain and insufficient as I humbly apprehend this to be.

Mr. *Williams.* My lords, I am also assigned, by your lordships, of counsel for this unfortunate lord, and humbly insist in arrest of judgment, that there is a defect in this Impeachment, in regard no certain day is laid, when the treason is charged to have been committed.*

In the Impeachment it is said, that this noble lord did, in or about the months of September, October or November, 1715, together with the others in the Impeachment named, traitorously compass the death of his most sacred majesty: that this noble lord did, in or about the said months, or some of them, together with the rest, agree and confederate to levy war against his majesty: that in or about the said months, or some of them, this noble lord with others did levy war, and did march through several parts of the kingdoms, and did proclaim the Pretender to be king; and that on or about the 9th, 10th, 11th, 12th, or 13th of the said November, the noble lord with others did seize and possess themselves of the town of Preston, and fought against his majesty's forces.

This is the effect of the Impeachment.

And with great submission I take it, that in point of law, the Impeachment is defective in respect of the uncertainty of the time when this treason is said to have been committed.

I humbly apprehend that the honourable the House of Commons is the grand inquest of the whole nation; and that their Impeachment is in nature of an indictment, found by that grand inquest: differing from an indictment in this respect, that an indictment is found by the inquest of a county only; but an impeachment by the grand inquest of the whole kingdom.

And taking it, that impeachments are properly to be resembled to indictments.

Then as the omitting of the laying of a certain day when the treason was committed, would be a material fault in the case of an indictment; with great submission, it is as material a defect in the case of an impeachment.

It seems plain, that in the case of an indictment, a certain day ought to be laid when the treason was committed.

It will, I believe, hardly be denied, but that in case of an indictment for treason, it would be ill, if it were laid, that the party indicted committed the treason on or about the first of September, 1715.

It would be apparently worse, if it were laid in an indictment, that the party committed the treason in or about the month of September, 1715.

It would be still worse (because more uncertain) if it were laid in an indictment, that the party committed the treason in or about the months of September, October or November, 1715.

And, with great submission, this, as I humbly take it, is the very case before your lordships; I mean, taking it, that impeachments and indictments, as to the material parts of them, are to be measured by the same rules of law, as I humbly conceive they ought to be.

That the certain day, for the committing the treason, ought to be laid in case of indictments for treason, seems to be proved, not only from the constant practice of laying a day certain in all indictments of treason; but from the reason of the law, which shews it to be a substantial and material part of the indictment.

That the constant practice, in case of indictments for treason, is to lay the day on which the treason is supposed to be done, will, as I presume, be admitted.

And such constant practice is, of itself, a strong argument that the law requires it.

But I humbly take it, that the reason of the thing argues still much stronger for me, and shews it to be an essential part of the indictment.

The reason of mentioning a day certain in the indictment when the treason is supposed to have been committed, is in some respects even for the benefit of the crown itself, and in some respects for the advantage of the party indicted.

It concerns the crown, in respect of the forfeitures accruing to the king, of the lands of the party indicted; for where an attainder ensues upon an indictment for treason, the lands of the party indicted are forfeited to the crown, not only from the judgment, but from the day mentioned in the indictment when the treason is charged to have been committed.

This is expressly said, in the lord Coke's 1 Inst. 13, a. b. 390, b. and the difference there taken is, between a writ of appeal and an indictment. It is there said, That if a man be indicted for a capital offence and outlawed upon it, the land of the party is forfeited from the day laid in the indictment, for the committing of the treason, or other capital crimes; but in the case of an outlawry upon a writ of appeal, because no day is mentioned in the writ, the forfeiture is only from the judgment.

And though in the case of a writ of appeal, which is called in Latin *breve*, from its brevity, no day is mentioned, yet in the declaration upon the appeal (which resembles an indictment) it is necessary not only to mention the

* As to this, see in this Collection the Case of Robert Lowick, vol. 13, p. 267.

day, but even the hour when the murder or felony was committed.

In the case of Wilson against Law, which was adjudged in the court of King's-bench, in the 6th year of king William and queen Mary, in an appeal of murder, an exception was taken to the appeal that it was too uncertain, in regard the murder was laid to be done, 'circa horam primam post meridiem,' and this incertainty even of the hour was much insisted upon: but this, it is true, was at length over-ruled, and held that 'circa horam primam,' or 'inter horam primam et secundam,' was well enough.

However no one, as I humbly apprehend, ever doubted, but that laying of a certain day when the fact was committed, is necessary both in the case of an indictment, and in a declaration upon an appeal; and that as to the land of the party indicted, the forfeiture relates to the day mentioned in the indictment.

But if the question were asked in the present case, from what day the real estate of this unhappy lord should be forfeited? It would, as I humbly apprehend, be difficult to answer it.

And that difficulty arises from the incertainty of the Impeachment, as to the time when the fact was committed.

If then, the laying in an indictment the certain day when the treason was committed concerns the benefit of the crown, as it surely does;

If it entitles the king to the forfeiture of the lands from the day laid in the indictment, as from the authorities I have mentioned it appears to do;

If this matter concerns that great prerogative and flower of the crown, and its right to forfeitures;

Then surely this omission can by no means be called a slight omission, or a fault in form only.

It will also have its weight with your lordships, that the mentioning a day certain in the indictment, when the crime is laid to have been done, is likewise for the benefit of the party indicted. It is for his advantage to know the time when he is charged to have committed the offence, and by that he will be the better enabled to defend himself against the accusation.

It is a known rule in law, that in all cases of indictments, (though for misdemeanors only) they ought to be strictly certain.

This rule holds *a fortiori* in cases of indictments for capital offences;

And still, *a fortiori*, in cases of indictments for high treason, where, for example sake, the judgment, though just, is as terrible as can well be thought of.

My lords, I am sensible I ought to have too great a value for your lordships' time, to cite any of those numerous cases in the law-books, which justify that known rule in the law that requires certainty in cases of indictments.

I shall only beg leave to mention to your lordships one case, which is an authority of your lordships, upon a writ of error before your lordships, which shews how strict the law is in the penning of indictments for treason; and that it requires that even what seems to be matter of form only in such indictments, must be complied with: it is the case of the king against Tucker, which was in the 6th year of king William and queen Mary, and is reported in serjeant Levinz, 3 Rep. 396, where Tucker was indicted for treason, and in the conclusion of the indictment it was not said to be 'contra 'allegiantiæ suæ debitum;' and upon this indictment Tucker was attainted, and his lands forfeited to the crown, and afterwards purchased under the attainder; but afterwards this attainder was reversed in a writ of error in the King's-bench upon very great debate, for want of those words in the indictment, 'contra 'allegiantiæ suæ debitum,' and upon a writ of error before your lordships the judgment of reversal was affirmed, by which means a purchaser under the attainder lost the estate.

With submission, this case is much stronger than the principal case now before your lordships.

In that case it might with seeming reason be objected, that the word *proditorie*, which is always in the body of every indictment, shews, and necessarily implies, that the treason committed was against the party's allegiance, for else how could it be *proditorie*?

Also in that case the treason is set forth at large in the indictment, together with the overt act, which demonstrates that the doing this must be against the party's allegiance.

But all this would not maintain the indictment, in regard indictments for treason were always laid to be against the party's allegiance.

And if the constant forms of indictments be an argument,

It is as strong a one for us in the present case; for I believe there never was an indictment without mentioning the day when the fact was committed.

Neither with submission, is this matter of form only, but it is the substantial part of the indictment, in regard in this point the king is interested in respect of the forfeiture, and the party in respect of his defence.

It will, I humbly presume, hardly be expected from us, that we should cite precedents of impeachments, especially, if it were known what few hours notice we had of attending your lordships in Arrest of Judgment.

However, I will beg leave to mention one case of an Impeachment fresh in your lordships' memory, Dr. Sacheverell's Case.

Dr. Sacheverell * was impeached before your lordships by the honourable House of Commons, for seditious expressions in two Sermons, the one preached at Derby assizes, and the other at St. Paul's, London; and in that Impeachment the precise days are laid when

* See his Case at the beginning of the present volume.

the Doctor preached each of these two Sermons.

And I humbly take it, that by a like reason a certain day ought to be laid in the Impeachment, when this treason was committed; and that the authority of Dr. Sacheverell's Case seems so much stronger than the present case in question, as the crime of treason is higher than that of a misdemeanor.

My lords, I have nothing else to say on behalf of this unhappy lord; unhappy, as being in that doubtful state of memory, not *insanæ* enough to be within the protection of the law, nor at the same time *sanæ* enough to do himself in any respect the least service whatever.

[Here the Managers gave some interruption to the Counsel.]

L. H. Steward. Mr. Williams, I apprehend the reason why the managers of the House of Commons appear uneasy with you, is, that you are going into a matter of fact, and which you have not leave to speak to; you must therefore confine yourself to the point of law that was stated.

Mr. *Williams.* My lords, I shall take up no more of your lordships' time; but humbly hope that the cases of indictments are parallel with those of impeachments;

That, as in an indictment for treason the want of laying a day when the treason is charged to have been committed, is a manifest error;

That as the constant forms of indictments are so;

That as the reason of the law requires they should be so;

So for want of this certainty in this Impeachment, we with great submission insist that the Impeachment is defective:

And therefore pray that the Judgment against this unfortunate lord may be arrested.

Mr. *Walpole.* My lords, the Commons have attended to the objection made by the counsel on the part and behalf of the noble lord at the bar, and they humbly conceive those learned gentlemen seem to forget in what court they are. They have taken up so much of your lordships' time in quoting of authorities and using arguments to shew your lordships what would quash an indictment in the courts below, that they seem to forget they are now in a court of parliament, and on an Impeachment of the Commons of Great-Britain. For should the Commons admit all that they have offered, it will not follow that the Impeachment of the Commons is insufficient; and I must observe to your lordships, that neither of the learned gentlemen have offered to produce one instance relating to an impeachment, I mean, to shew that ever the sufficiency of an impeachment was called in question from the generality of the charge, or that any instance of that nature was offered at before. The Commons do not conceive, that if this exception would quash an indictment, it would therefore make this Impeachment insufficient; nor do they think it necessary, in justice to the noble lord at the bar, that a certain day should be mentioned in the Impeachment. They do not think from the nature of this crime, and the evidence that has been given, that there can be any hardship for want of fixing a certain day on which the treason was committed. What he is charged with, is being concerned in a most notorious rebellion. The time mentioned in the Impeachment is the months of September, October, and November, and particularly the ninth, tenth, eleventh, twelfth, and thirteenth days of November. He is charged with being concerned from the time that he left his own house, to the time he was taken at Preston; and it hath been proved, I believe, in a more ample manner than ever any crime of the like nature hath been. And how can this noble lord suffer because no particular day is mentioned, after he continued in rebellion for so many days and months, and marched through so many counties? It is impossible to conceive he can suffer from any uncertainty in the Charge, in not having a particular day fixed. But, my lords, the Commons think themselves sufficiently justified, and their impeachment supported by a precedent I have in my hand, the trial of my lord Stafford, who was tried for high-treason, and was executed for the same. And I observe that he had counsel, and it appears he offered some things in arrest of judgment; and although it will appear that the time was more uncertain in that Impeachment, yet that was never attempted to be offered in arrest of judgment. In his case the words of the Articles of Impeachment are, that for divers years last past, a damnable contrivance and conspiracy had been formed and carried on, that is just as these Articles are; and when they come to the particular charge, all that is said is, that within the time aforesaid, &c. that is, some time within divers years last past; but this Impeachment is so far from being uncertain, that the Commons have named three months, in which the treason charged in the Impeachment was committed; and in the precedent it is only said, within some of the years last past; so that here the Commons are sufficiently justified in the Articles exhibited by them, by the precedent I have mentioned; and there judgment passed, and nothing of this nature was offered in arrest of judgment. I hope this will satisfy your lordships, that this Impeachment is sufficient notwithstanding this objection; and I hope it will never be allowed here as a reason, that what quashes an indictment in the courts below, will make insufficient an impeachment brought by the Commons of Great-Britain.

Attorney General. My lords, the counsel for the prisoner have made two objections, as I apprehend, in point of law, which I would give a short answer to, without taking notice of the other matter which was spoke to by one of the gentlemen contrary to the orders of the House.

The first objection is, that there is no certain day charged in the impeachment, when the treason was committed.

The second is, that as to several of the overt-acts there is no time mentioned at all.

I would follow the steps of the learned gentleman who spoke before me, and I think has given a good answer to these objections: I would take notice, that we are upon an impeachment, and not upon an indictment. The courts below have set forms to themselves, which have prevailed for a long course of time, and thereby are become the forms by which those courts are to govern themselves; but it never was thought, that the forms of those courts had any influence on the proceedings of parliament. In Richard the second's time it is said in the records of parliament, that proceedings in parliament are not to be governed by the form of Westminster-hall.

I beg leave to take notice in answer to this objection, that though it is the usual form in the courts below to allege a certain day on which the crime is charged to be committed; yet at the same time they add (and at divers other days and times) and that day which is laid, is only for form sake; but that day is not material, they are not bound to prove the crime committed on that day, but they may prove the defendant guilty at any time, either before or after the day laid in the indictment. There has been produced, by the honourable gentleman who spoke before, a precedent in parliament much stronger than this case, it is the case of the lord Stafford; there is not so much certainty as there is in this impeachment. Here it is said, that on or about the months of September, October, or November, or on about one of them, the crimes charged in the Impeachment were committed; but all that is said in my lord Stafford's case is, that there had been for many years then last past a damnable conspiracy carried on; and when they came to charge the noble lord with particular facts, there is no time mentioned at all.

One of the gentlemen cited another case in parliament, which was Dr. Sacheverell's case: there was in that case an exception taken to the impeachment for uncertainty: and it was said and argued from the forms of the courts in Westminster-hall, that where indictments were for words spoke or writ, the words must be laid as they were spoke or wrote; and the opinion of the judges was, that it was necessary according to the forms of the courts below, but it was resolved to be otherways in the Court of Parliament, and they were not bound but by their own forms,* so that upon this head we apprehend we are clear of the forms of law in the courts below, and that they are of no use, since, if a certain day is laid, they are not by law bound to prove the crime committed on that day, but may prove it upon any other day.

The second objection is, that there is no time laid for some of the overt-acts.

I think there is a certain day charged when one of them was done, the seizing of Preston; and in the inferior courts it has been held, that it is not necessary there should be a day and place alleged for every overt-act.

We think this objection has no weight in it, and therefore would not spend more of your lordships time in it; we are in the case of an impeachment, and in the Court of Parliament. Your lordships have already given judgment against six upon this Impeachment, and it is warranted by the precedents in parliament; therefore we insist that the Articles are good in substance, and according to the forms of parliament.

Mr. *Cowper*. The objection, as stated by the prisoner, and upon which his counsel have argued, is this, that the time of the treason committed is not laid in the Impeachment with sufficient certainty. The counsel have acquainted your lordships with the practice of inferior courts, and have insisted too much upon the precedents of trespasses and other crimes set forth in indictments, considering the question arises upon the usage and practice of the High Court of Parliament; and they cannot but know that the usages of parliaments are part of the laws of the land, although they differ in many instances from the common law, as practised in the inferior courts, in point of form.

My lords, if the Commons, in preparing Articles of Impeachment, should govern themselves by precedents of indictments, in my humble opinion they would depart from the ancient, nay, the constant usage and practice of parliament.

It is well known that the form of an impeachment has very little resemblance to that of an indictment: and I believe the Commons will endeavour to preserve the difference, by adhering to their own precedents.

One of the learned gentlemen has said, that he had not time to search parliamentary precedents: that gentleman seldom wants time to make himself serviceable to his clients; but when he has more leisure, I believe he will not find one precedent, where, in the case of an Impeachment of high treason, there hath been a certain day or time laid when the treason was committed. The precedent that hath been mentioned of my lord Stafford is directly otherwise: there your lordships will find it laid thus, that for many years last past there has been contrived and carried on by Papists a traitorous and execrable conspiracy. And afterwards when it comes to charge the treason and overt-acts, it alleges they were done and committed within the time aforesaid. And yet we do not find any exception was taken for want of certainty, although not so much as a year was laid with certainty, within which the treason was committed.

In the case of my lord Wintoun the Commons have charged, that his lordship, together with James earl of Derwentwater, and several others, as false traitors to his majesty, did, in or

* See *ante*, p. 467.

about the months of September, October, or November, 1715, traitorously imagine and compass the death of the king: that his lordship and the rest, to accomplish their said traitorous purpose, did, in or about the said months, or some of them, conspire and agree to levy war within this kingdom, in order to depose and murder his majesty: that his lordship did, within the time aforesaid, traitorously levy a war and rebellion in the bowels of the kingdom; and that he, together with his accomplices and confederates, did, on or about the ninth, tenth, eleventh, twelfth, or thirteenth of November aforesaid, traitorously seize and possess themselves of the town of Preston; and did then and there cause and procure a miserable and horrid slaughter and murder of many of his majesty's faithful subjects. So that, my lords, here is a certainty not only of the year, but of the months and days; and the treasons committed by the prisoner are, with submission, not only charged with certainty as to the point of time, but are charged with a great deal more certainty than was necessary, in a case where his lordship's treason began at Seaton hos e and continued from thence till the surrender at Preston.

Surely there is not the least weight in the prisoner's objection; for even in the case of an indictment, though it be necessary to lay a day, yet it is not necessary to prove the treason to be done upon that day; so that even in inferior courts it is an immaterial form. One would think, if it be necessary to assign a day certain, it should be necessary also to prove the treason to be done upon that day; but it is not requisite to prove the treason upon the day; therefore in inferior jurisdictions it seems rather a form than substance. The courts below have, it is true, their forms, many forms for which no reason can be given; but I believe in parliamentary process, nothing is necessary that is not material.

Sir *W. Thomson.* My lords, we humbly apprehend that the exception taken in arrest of judgment, has no foundation in law or reason.

As to the law, we must refer to the forms of proceedings in the Court of Parliament, which is the law of parliament, and which must be owned to be part of the law of the land. It has been mentioned already to your lordships, that the precedents in impeachments are not so nice and precise in form as in the inferior courts; and we presume your lordships will be governed by the forms of your own court, (especially forms that are not essential to justice) as the courts below are by theirs; which courts differ one from the other in many respects as to their forms of proceedings, and the practice of each court is esteemed as the law of that court.

As to the reasons alleged to support the exception, they will receive a plain answer.

It is said, that it is necessary to allege a certain day in an impeachment when the fact was committed, that the defendant may be able to make his defence, that he may produce witnesses to give an account where he was at the time he is accused to have been guilty. And one of the learned counsel was pleased to say, that this is requisite in indictments for the smallest offences, and ought to be much more so in capital cases, and in impeachments for so high a crime as treason. My lords, that gentleman knows very well, that the day which is mentioned in an indictment is not material to the purpose of making a defence as to that time only, for that the defendant must come prepared to give an account of his innocence all the time between the day alleged and the indictment found. And in this case there is no hardship on the noble lord at the bar. Here is one of the treasons alleged to be within the compass of five days, (viz. the seizing of Preston, levying war there, and engaging the king's troops,) if he could have given an account of himself to have been elsewhere at those times, it might have been of service to him: but that happened, very unfortunately for him, to be otherwise; and your lordships have found him guilty of those facts on or about those five days: which has created a second reason to be offered to your lordships, that the time alleged is not sufficiently certain (viz.) To what day shall the forfeiture of the defendant's estate relate? If it is taken the most favourably for the defendant, the conviction shall operate so as to make the forfeiture only from the last of these days, and I do not apprehend any other inconvenience. But to infer, that for that reason no judgment at all shall be given upon this conviction, where the material, the substantial part of the issue is found, seems not to be right consequence.

My lords, we conceive for these reasons, and what has been mentioned before, this exception has no weight in it, and hope your lordships will over-rule it.

L. H. Steward. Gentlemen of the House of Commons, I suppose you do not oppose the counsel's replying to you; afterwards, if you have any thing to offer you may be heard to it.

Att. Gen. My lords, we do not object to it, if the Commons have the liberty of speaking afterwards and closing, which they insist upon as their right.

L. H. Steward. Gentlemen, you may reply.

Sir *C. Phipps.* Is it your lordships' pleasure that we reply?

L. H. Steward. You may reply.

Sir *C. Phipps.* If your lordships please, we do not, with great submission, apprehend they have answered our objection; but before I take notice of the answers, I beg leave to set the learned gentleman that spoke last right in one thing, wherein he did misapprehend me: he was pleased to suggest that I said the day laid in an indictment was material. I do not remember I said so, for I never thought the day so material, that there was a necessity to prove the treason to be committed upon that very

day; I did say there ought a certain day to be alleged in indictments, and that there always is; but how material that day is, when alleged, is another consideration; but I conceive the day laid in an indictment, ought to be very near the time, if not upon the very day the treason is supposed to be committed, for the reasons I have before offered; and I take constant practice to be so. I perceive all the gentlemen who have spoke in answer to me have been pleased to admit, that in indictments for treason and other capital offences, there is a certain day always alleged. The honourable gentleman that spoke first, was pleased to make a difference between an indictment and an impeachment: that an impeachment is a parliamentary proceeding, and that the parliament in their proceedings are not tied up to such strict forms as the courts below. I have already spoken fully to this point, and therefore shall not trouble your lordships with any repetition, but submit to your lordships' judgment, whether an impeachment, by which a noble peer is to be attainted, ought not to be as certain as an indictment, by which a commoner is to be attainted, and whether by the Lex Parliamentaria as much certainty is not required in one case as in the other. The same gentleman was pleased to observe, that the impeachment in my lord Stafford's Case was more general than this, for there it was charged, that for many years last past there had been a conspiracy to alter and subvert the government, &c. In answer to which I beg leave to take notice, that the impeachment of that lord begins with an account of the plot in general, and in that case there is no doubt but such a general allegation was sufficient. But whether the particular part, which my lord Stafford had in that plot, be not more certainly alleged; I must beg leave to refer to the trial, for I cannot take it upon my memory to say one way or other. But whether it was so or no, I think is not material; for that honourable person admits, that no objection was made to that impeachment for the uncertainty of the charge: if such objection had been made and over-ruled, it would have been a full answer to us; but since no notice was taken of it, our objection is as strong, and of the same force as if that case had never happened.

A learned gentleman of great eminence in the law was pleased to observe, that frequently in indictments for treason, the offence is laid to be committed, *diversis aliis diebus et vicibus*, which is true; but then in all such cases there is a particular day first charged in the indictment; and I believe that learned gentleman, or any other of the long robe, will not say that an indictment conceived in such general terms, without alleging a particular day, would be good. As to that part of the Impeachment which relates to the taking of Preston, though that seems more certain than any other overt-act; yet I have shewed that the words 'or about,' leave at large, and render it uncertain.

My lords, this is what we humbly offer by way of reply; and humbly submit to your lordships' judgment, whether our objections are not good, notwithstanding what has been said in answer to them.

Mr. *Williams*. My lords, I must submit it to your lordships, whether the learned managers have answered the objection which we have humbly laid before your lordships in arrest of judgment.

The managers are pleased to object, that we are attempting to quash an impeachment of the honourable House of Commons for high-treason, and that this has not been known.

But, my lords, with great submission, we are not endeavouring to quash this Impeachment: we are so far from it, that we must admit that the courts of King's-bench will not quash indictments for treason, nor indictments for felony, nor even indictments for any gross misdemeanors, but will put the party to plead to such indictments; but in the present case, where the matter in issue has been tried, and the unhappy lord is convicted; if this Impeachment be defective, as I humbly hope and insist it is, then what other way, what other method has this unfortunate lord at the bar to take advantage of this defect, but by offering it to your lordships in arrest of judgment, which on my lord's behalf we now humbly do?

It seems admitted, as I apprehend, that had the present question been upon an indictment, instead of an impeachment, that then the exception might have prevailed: but the managers are pleased to insist, that the law and course of parliaments justify this omission in case of impeachments; and for this an honourable manager has been pleased to cite the late lord Stafford's Case; and that the impeachment of that lord was more uncertain, as to the time laid for the committing the treason, than the Impeachment now before your lordships.

My lords, I must confess I am very unfit to answer an objection of this nature, and which concerns the course of parliaments: But would beg leave, with the greatest submission, to observe, that only one precedent (I beg pardon if I mistake, I mean that of the late lord Stafford) has been cited against us: It must be submitted to your lordships, how far that one single precedent will of itself be taken as a proof, that this is the course and custom of parliamentary impeachments, especially when it appears that the objection now made, was not made in that case. It must be submitted to your lordships, whether repeated and iterated acts are not requisite to prove this, as well as all other customs; and that if this were 'lex et consuetudo parliamenti,' whether it would not be an easy matter to cite many instances in that behalf, and whether it is not the more necessary in this case to cite farther precedents, in regard the single case of the lord Stafford may seem, as to this point, to have lost some part of its force, by the later precedent of Doctor Sacheverell's case, when even

in case of a misdemeanour, a certain day is laid in the impeachment when the misdemeanour is charged to have been committed.

It has been also objected by the learned managers, that in indictments of high treason, it is usually charged, that the party committed the treason 'diversis diebus et vicibus,' which is as uncertain as the present Impeachment.

My lords, it is very true that these words '(diversis diebus et vicibus)' are as uncertain as the words in the present Impeachment; and that these words are usually put into indictments: But with submission, it is as true, that in all indictments for treason, over and besides these words, there is a certain day laid when the treason is said to be committed; and I would beg leave to know, whether if in case of an indictment, the treason were laid to be committed 'diversis diebus et vicibus,' without any further certainty as to the day, whether this would not be ill for the uncertainty: And this case, with submission, seems to come nearest to the present case; and as to the words 'diversis diebus et vicibus,' though they are frequently mentioned in an indictment, yet they are only surplusage, and the indictment good, whether with them, or without them.

It is likewise objected, that if a certain day for the committing this treason had been mentioned in this Impeachment, or in an indictment, yet it had not been material; because if the treason had been proved to have been committed on any other day, the party must have been found guilty; and therefore, if the day be immaterial, the omitting of it must be also immaterial.

My lords, I must admit that the day, as to the party indicted, is not in this respect so far material, but that if it should be proved that the party committed the treason on a different day than that laid in the indictment, yet the party must be found guilty: And that it might put too great a difficulty on such prosecution, to hold, that if the treason be not proved to be committed on the precise day laid in the indictment, that therefore the party, who appears still guilty of the treason, should upon the nicety of the time be found not guilty; but what I humbly insist on is, that it is the constant course to mention a day certain in the indictment; and that the day thus mentioned in the indictment is, as I believe, generally the very day on which the treason is insisted on to be committed; and to know this, is, with submission, of great use to the party indicted or impeached, and may very much assist him in his defence. And I farther humbly insist, that the mentioning of a day certain in the impeachment or indictment for the committing the treason, is manifestly for the advantage, and the omitting it is to the prejudice of the crown; in regard, as between the party impeached or indicted, and the crown, the forfeiture of the land to the king shall relate to that day which is laid in the impeachment or indictment.

My lords, from hence, with the greatest deference to your lordships, I beg leave to infer;

That the mentioning of a day certain in the Impeachment, is material.

That by consequence the omission of it is also material;

That therefore in respect of this omission, the Impeachment is defective;

And in regard of this defect I humbly pray that your lordships would be pleased to arrest the judgment.

Attorney General. My lords, for preserving the rights of the Commons of Great Britain, I shall trouble your lordships with a word or two.

I think the learned gentlemen have left it now where they left it on their first speech; They now agree that the particular day in an indictment is but form, and that the fact may be proved any day before or after, and so the law is in the inferior courts.*

I only add this, that the prisoner loses no benefit nor gets any, by having a day charged or omitted; for since it is of no use, he must provide for his defence as if no day was laid: and since it is immaterial in indictments, it must be so in impeachments. We are justified by the forms and precedents of parliament. As to the answer given to my lord Stafford's case, that this objection was not made there, but that it past *sub silentio*: If that Impeachment had not been thought good, we know he had the assistance of learned counsel, who were well able to advise him, and who certainly would have taken the exception. There is no uncertainty in it that can be to the prejudice of the prisoner, we insist it is according to the forms of parliament, he has pleaded to it, and your lordships have found him guilty.

L. H. Steward. My lord Wintoun, your counsel have been heard, hath your lordship any thing more to offer in arrest of judgment?

L. *Wintoun.* If your lordship will be pleased to ask the counsel, they will tell you what they have to object.

L. H. Steward. My lord, you have been told again and again, upon this occasion, that the point you would have your counsel speak to must be first stated and proposed by yourself; you have had a sufficient opportunity to inform yourself.

L. *Wintoun.* Since your lordship will not allow my counsel, I don't know nothing.

Lord *Stamford* moved to adjourn.

L. H. Steward. I once more acquaint your lordship, that as your counsel have been allowed to speak; so the question yet is, whether you have any other point or matter for them

* As to the necessity of stating in indictments some time when each material fact happened, see in this Collection the Case of Lowick, vol. 13, p. 267. And the Trial of lords Kilmarnock, Cromertie, and Balmerino, A. D. 1746.

to speak to; the Lords are ready to hear: Have you any thing else to propose?

L. Wintoun. If you will allow my counsel to answer, he will answer.

L. H. Steward. My lords! Is it your lordships' pleasure to adjourn to the Chamber of Parliament?—*Lords.* Ay, ay.

Then the House was adjourned about three of the clock, and about five returned again, and proclamation was made for silence as usual.

L. H. Steward. George earl of Wintoun, I have already acquainted you, that your peers have found you guilty, (i. e.) in the terms of the law, convicted you of the high-treason whereof you stand impeached.

After your lordship has moved in arrest of judgment, and the Lords have disallowed that motion; their next step is to proceed to judgment.

The melancholy part I am to bear in pronouncing that judgment upon you, since it is his majesty's pleasure to appoint me to that office, I dutifully submit to it; far, very far, from taking any satisfaction in it.

Until conviction, your lordship has been spoke to without the least prejudice, or supposition of your guilt; but now it must be taken for granted, that your lordship is guilty of the high-treason whereof you stand impeached.

My lord, this your crime is the greatest known to the law of this kingdom, or of any other country whatsoever: And it is of the blackest and most odious species of that crime, a conspiracy and attempt, manifested by an open rebellion, to depose and murder that sacred person, who sustains and is the majesty of the whole; and from whom, as from a fountain of warmth and glory, are dispersed all the honours, all the dignities of the state, indeed the lasting and operative life and vigour of the laws, which plainly subsist by a due administration of the executive power.

So that attempting this precious life, is really striking at the most noble part, the seat of life and spring of all motion in this government; and may therefore properly be called a design to murder, not only the king, but also the body politic of the kingdom.

And this is most evidently true in your lordship's case: considering that success in your treason must infallibly have established Popery; and that never fails to bring with it a civil, as well as ecclesiastical tyranny; which is quite another sort of constitution than that of this kingdom, and cannot take place till the present is annihilated.

This your crime (so I must now call it) is the more aggravated, in that when it proceeds so far, as to take arms openly, and to make an offensive war against lawful authority, it is generally (as in your case) complicated with the horrid and crying sin of murdering many, who are not only innocent but meritorious.

And if pity be due (as I admit it is, in some degree) to such as suffer for their own crimes; it must be admitted, a much greater share of compassion is owing to them, who have lost their lives merely by the crimes of other men.

As many as have so done in the late rebellion, so many murders have they to answer for who promoted it; and your lordship, in examining your conscience, will be under a great delusion, if you look on those who fell at Preston, Dumblain, or elsewhere, on the side of the laws, and in defence of settled order and government, as slain in lawful war; even judging of this matter by the law of nations.

Alas! my lord, your crime of high-treason is made yet redder, by shedding a great deal of the best blood in the kingdom: I include in this expression the brave common soldiers, as well as those gallant and heroic officers, who continued faithful to death in defence of the laws; for sure but little blood can be better than that which is shed, while it is warm, in the cause of the true religion, and the liberties of its native country.

Believe it, notwithstanding the unfair arts and industry used, to stir up a pernicious excess of commiseration, towards such as have fallen by the sword of justice, (few, if compared with the numbers of good subjects murdered from doors and windows at Preston only) the life of one honest loyal subject is more precious in the eye of God, and all considering men, than the lives of many rebels and parricides.

This puts me in mind to observe to your lordship, that

There is another malignity in your lordship's crime (open rebellion,) which consists in this; that it is always sure of doing hurt to a government in one respect, though it be defeated; (I will not say it does so on the whole matter.)

For the offence is too notorious to be let pass unobserved, by any connivance: Then is a government reduced to this dilemma; if it be not punished, the state is endangered, by suffering examples to appear, that it may be attacked with impunity; if it be punished, they who are publicly or privately favourers of the treason (and perhaps some out of mere folly) raise undeserved clamours of cruelty against those in power; or the lowest their malice flies, is, to make unseasonable, unlimited, and injudicious encomiums upon mercy and forgiveness (things rightly used, certainly of the greatest excellence.)

And this proceeding, it must be admitted, does some harm, with silly, undistinguishing people.

So that rebels have the satisfaction of thinking they hurt the government a little, even by their fall.

The only, but true consolation every wise government has in such a case (after it has tempered justice with mercy in such proportion as sound discretion directs, having always a care of the public safety above all things) is this;

That such like seeds or unreasonable discontents take root on very shallow soil only;

and that therefore, after they have made a weak shoot, they soon wither and come to nothing.

It is well your lordship has given an opportunity of doing the government right, on the subject of your surrender at Preston.

How confidently had it been given out by the faction, that the surrender was made on assurances, at least hopes insinuated of pardon: Whereas the truth appears to be, that fear was the only motive to it; the evil day was deferred; and the rebels rightly depended, fewer would die at last by the measures they elected, than if they had stood an assault: They were awed by the experienced courage, discipline, and steadiness of the king's troops; and by the superior genius and spirit of his majesty's commanders over those of the rebels, so that in truth they were never flattered with any other terms, than to surrender as rebels and as traitors; their lives only to be spared till his majesty's pleasure should be known.

It was indeed a debt due to those brave commanders and soldiers (to whom their king and country owe more than can be well expressed), that their victory should be vindicated to the present and future ages from untrue detraction, and kept from being sullied by the tongues of rebels and their accomplices, when their arms could no longer hinder it.

It is hard to leave this subject without shortly observing, that this engine which sets the world on fire, a lying tongue, has been of prodigious use to the party of the rebels, not only since and during the rebellion, but before, while it was forming, and the rebels preparing for it.

False facts, false hopes, and false characters, have been the greater half of the scheme they set out with, and yet seem to depend upon.

It has been rightly observed, your lordship's Answer does not so much as insist, with any clearness, on that, which only could excuse your being taken in open rebellion; that you was forced into it, remained so under a force, and would have escaped from it, but could not.

If you had so insisted, it has been clearly proved, that had not been true; for your lordship was active and forward in many instances, and so considerable in a military capacity among your fellow-soldiers, as to command a squadron.

These and other particulars have been observed by the managers of the House of Commons, and therefore I shall not pursue them farther;

But conclude this introduction to the sentence, by exhorting your lordship, with perfect charity, and much earnestness, to consider, that now the time is come when the veil of partiality should be taken from your eyes (it must be so when you come to die), and that your lordship should henceforward think with clearness and indifference (if possible), which must produce in you a hearty detestation of the high crime you have committed; and being a Protestant, be very likely to make you a sincere penitent, for your having engaged in a design, that must have destroyed the holy religion you profess, had it taken effect.

Nothing now remains, but that I pronounce upon you that sentence which the law ordains, and which sufficiently shews what thoughts our ancestors had, of the crime of which your lordship is now convicted: viz.

'That you George Earl of Wintoun return to 'the prison of the Tower from whence you came: 'from thence you must be drawn to the place 'of execution; when you come there, you must 'be hanged by the neck, but not till you be 'dead; for you must be cut down alive, then 'your bowels must be taken out, and burnt be-'fore your face; then your head must be se-'vered from your body, and your body divided 'into four quarters; and these must be at the 'king's disposal.' And God Almighty be merciful to your soul!

Serjeant at Arms. O Yes! Our sovereign lord the king strictly charges and commands all manner of persons to keep silence, upon pain of imprisonment.

Then the Lord High Steward stood up uncovered, and declaring there was nothing more to be done by virtue of the present commission, broke the staff, and pronounced it dissolved; And then leaving the chair, came down to the woolpack, and said, Is it your lordships' pleasure to adjourn to the House of Lords?

Lords. Ay, ay.

And then the House adjourned to the chamber of parliament, and the Lords and others returned in the same order they came down.

The earl of Wintoun was carried back to the Tower, from whence he afterwards made his escape.

Soon after the termination of this trial, Curll and others were attached in consequence of a complaint which had been made (Ap. 13th, 1716) to the House of Lords, of a printed paper intituled, 'An Account of the Trial of the 'earl of Wintoun, which began on the 15th, and 'ended the 19th of March, 1716, mentioned to 'be printed for S. Popping, at the Black Raven, 'in Paternoster-row, 1716, price two-pence.'

It appears that Curll suffered more than the others. On the 17th of April the House was informed that he was in custody. It was not until May 8th, that he presented a petition to the House, expressing his ignorance of their standing order, and his hearty sorrow for his offence, and praying, "in regard he had a family, which must inevitably be ruined unless the House have compassion on him, that he may be discharged from his confinement."

On the 11th he was brought to the bar, where having on his knees received a reprimand from the Lord Chancellor for his offence, he was discharged out of custody, paying his fees.

While Curll was in custody, the House caused to appear before them (May 2nd), on

account of the publication in a newspaper of "An Abstract of the Protest against the Bill for repealing the Triennial Act," the two printers and publishers of the newspaper, and the person who furnished the copy of the article in question. The House did not treat them with much severity. One of the publishers said, "that though his name was put to the said paper, yet he was out of town and never saw the same, till it was printed;" and withdrew: and thereupon he was discharged from any farther attendance. The other two persons pleaded ignorance of the order of the House, begged forgiveness, and promised never to offend again. They on their knees were at the bar reprimanded by the Lord Chancellor, and discharged.

451. The Trial of Francis Francia, a Jew, at the Old-Bailey, for High-Treason: 3 George I.* A. D. 1717.

Francis Francia having been formerly arraigned upon the Indictment found against him for high-treason, and having pleaded Not Guilty, was on Tuesday the 22d of January brought to the bar to receive his trial.

Clerk of Arraignments. You the prisoner at the bar, these men that you shall hear called, and personally appear, are to pass between our sovereign lord the king and you, upon trial of your life and death. If therefore you will challenge them, or any of them, your time is to challenge them as they come to the book to be sworn, and before they be sworn.

Cl. of Arr. Sir Dennis Dutry, bart.

Prisoner. Are you a freeholder in this city?

Sir *Dennis Dutry.* Yes.

Sir *J. Jekyll.* My lord, we that are counsel for the king, desire, that those who are called may be asked that question; whether they have freehold (or copyhold) of ten pounds per ann. or not; before they are sworn in chief?

Att. Gen. (Sir Edward Northey.) We suppose the prisoner will ask that question; and therefore we desire that it may be asked of every one as they come to the book.

Mr. *Ward.* It is a challenge on both sides.

L. C. Baron. (Sir Thomas Bury.) They ought to be sworn whether they have a freehold or not, if they would excuse themselves.

Mr. *Hungerford.* I have nothing to offer against it. In case the king's counsel think fit to proceed in that method, we concur in it. I should have moved it myself, if they had not.

Att. Gen. It was in the trial of the rebels.

Prisoner. He has had a quarrel with me; and there was a suit depending between us about seven years ago: and I challenge him for cause.

Att. Gen. He may challenge him peremptorily, if he will. But if he challenges him for cause he must prove it.

Prisoner. Sir Dennis will not deny it.

L. C. Baron. If you challenge him, you must prove your challenge. Do you challenge him for cause, or peremptorily?

Prisoner. For cause.

L. C. Baron. That which you assign is no cause.

(Then sir Dennis was sworn upon a Voir Dire, with respect to his freehold; as all the others were, before they were either challenged, or sworn in chief.)†

Sir *J. Jekyll.* Sir, have you a freehold in this city?‡—Sir *D. Dutry.* Yes.

Sir *J. Jekyll.* To what value?

Sir *D. Dutry.* About ten pounds a year.

Prisoner. My lords, there has been a suit depending between us.

Att. Gen. If they talk of a suit, they must prove it by record.

Prisoner. His name is Dennis; and they

* See East's Pleas of the Crown, chap. 2, s. 66, and the MSS. there cited. Leach's Hawk. Pl. Cr. book 2, chap. 25, s. 140. Foster 11, 241.

† "If the cause of challenge touch the dishonour or discredit of the juror he shall not be examined upon his oath," [See Peter Cook's case, vol. 13, p. 334,] "but in other cases he shall be examined upon his oath to inform the triors." Co. Lit. 158, b. Upon which passage lord Coke's learned commentator Mr. Hargrave, observes, "This is one instance of the examination called a *voir dire*; for as a witness is on a *voir dire* to try an objection to his competency to give evidence, so a juror may be sworn in like manner to try the cause of challenge to him. It is thought fit to take notice of this; because in some of our books, the *voir dire* is described, as if confined to the challenge of a witness, and only used to distinguish such a partial swearing of a witness from swearing of him in chief." Mr. Hargrave also notices that in this case, and that of Mr. Townley (in this Collection 20 Geo. 2,) the challenges not being 'to the favour' were examined into by the court without triors. As to more concerning the *voir dire*, see Peake's Law of Evidence as referred to, vol. 13, p. 334, and lord Lovat's Case in this Collection (A. D. 1747) as cited by Mr. Peake. As to the distinction between 'competent' and 'credible' as applied to witnesses, see lord Mansfield's judgment in Windham *v.* Chetwynd, 1 Burrow; also Abrahams *v.* Bunn, Burrow 2251; Bent *v.* Baker, 3 T. Rep. 27.

‡ See Hawk. Pl. Cr. book 2, c. 43, ss. 12, 24.

have given me a pannel with barbarous Latin. In my copy of the pannel, he is returned by the name Dionysius; that is not the same name.

Mr. *Ward.* The prisoner observes, that in the pannel he is returned by the name of Dionysius, when his name is Dennis.

Sir *J. Jekyll.* He is to have a copy of the pannel; but it is not to be put into English for him.

Mr. *Ward.* But we say, that is not Latin for Dennis.

Sir *J. Jekyll.* Sure no one will argue, but that Dionysius is the proper Latin name for Dennis.

L. C. Baron. You offer no cause of challenge.

Prisoner. I hope I prove his name is returned in the pannel Dionysius.

L. C. Baron. It is so; and that is Latin for Dennis.*

Prisoner. No, it is not. Dennis is a saint in France, and Dionysius is a saint in Italy. They are two different names, and of different countries.

L. C. Baron. Dionysius is Latin for Dennis. If they do not challenge him peremptorily, he must be sworn.

Prisoner. I allege that we fell out about seven years ago: and that his name is not Dionysius, as it is wrote in the pannel. And in my former pannel he was put down Knight, and in this Baronet.

L. C. Baron. These things are nothing, except the suit; and that you must prove.

Mr. *Hungerford.* As to the distinction of the two saints, I do not meddle in it. But I suppose sir Dennis can tell whether he is a knight or a baronet. But as to the saints, whether the nominal ones abroad, or the pretended ones at home, I let them alone.

Prisoner. You allowed this challenge the last time.

Att. Gen. You challenged him peremptorily.

Mr. *Ward.* He was stiled knight in the last pannel.

L. C. Baron. That does not appear to us. You must either challenge him peremptorily, or he must be sworn.

Prisoner. I must do what you order; but I think it very hard. Then I challenge him.

Cl. of Arr. Sir John Scott, knt.

Prisoner. I challenge him.

Cl. of Arr. Sir Daniel Wray, knt.

Prisoner. I do not except against him. (Then he was sworn.)

Cl. of Arr. Sir W. Chapman, knt.

Prisoner. I challenge him.

Cl. of Arr. Joseph Webb.

Prisoner. I challenge him.

Cl. of Arr. Robert Adams.

Prisoner. Were you upon the grand jury, that found the Indictment against me?

Adams. No.

Prisoner. I challenge him.

Cl. of Arr. Robert Ashurst.

Prisoner. I challenge him.

Cl. of Arr. Joseph Bishop.

Prisoner. I challenge him.

Cl. of Arr. Thomas Boucher.

Prisoner. I challenge him.

Cl. of Arr. Joseph Brooksbank.

Prisoner. I challenge him.

Cl. of Arr. Nicholas Benoist.

Prisoner. I challenge him.

Cl. of Arr. John Child.

Prisoner. I challenge him.

Cl. of Arr. Joseph Chamberlain. (He was sworn.)

Cl. of Arr. John Casebert.

Prisoner. He was upon the grand jury that found the Bill against me; and I challenge him for that cause.

Cl. of Arr. Robert Wood.

Prisoner. I challenge him.

Cl. of Arr. Isaac Cailovell.

Prisoner. He don't write his name as it is in the pannel. I could never find this gentleman out by all the enquiry I could make.

L. C. Baron. What is the mistake?

Prisoner. It is wrote in the pannel *v* consonant, and he spells his name with a *w*. And it is in the pannel a single *l*, and he writes it with a double *ll*.

(Then Mr. Cailovell being asked, said he wrote his name with a *v* consonant, as in the pannel; but with a double *ll*.)

L. C. Baron. That does not alter the pronunciation. It is the same name.

Prisoner. I challenge him.

Cl. of Arr. Thomas Davis. (He was sworn.)

Cl. of Arr. John Dodson, esq.

Prisoner. I challenge him.

Cl. of Arr. William Dewick.

Prisoner. I challenge him.

Cl. of Arr. William Dell.

Prisoner. I challenge him.

Cl. of Arr. John Davis. (He was sworn.)

Cl. of Arr. Joseph Emmes. (He was sworn.)

Cl. of Arr. John Farr. (He was sworn.)

Cl. of Arr. Thomas Gouge.

Prisoner. I challenge him.

Cl. of Arr. Thomas Geering.

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* To this Latinity perhaps is applicable an observation which was made in the case of Layer, that it is more admissible in Westminster-hall than in Westminster school. The French, in their obstinate affectation of corrupting the orthography and pronunciation of all foreign names, ancient and modern, I believe always pervert Διονυσιος and Dionysius into Denys; and thus an antagonist of Burnet, in an unlucky display of second hand learning, was misled into a reference to the authority of Denys of Halicarnasse. Query as to the propriety upon any occasion of applying to English names the properties of other languages from which they are supposed to be derived, or into which they are supposed to be translated.

Prisoner. I challenge him.
Cl. of Arr. Joseph Goddard.
Prisoner. I challenge him.
Cl. of Arr. Robert Gill.
Prisoner. I challenge him.
Cl. of Arr. Henry Greenway.
Prisoner. I challenge him for cause. He is returned upon the pannel Greenway, and his name is Greenaway: that is a different name.

Sir *J. Jekyll.* How are you usually called; Greenway, or Greenaway?

Greenaway. I am most commonly called Greenaway.

(Then he was set aside.)

Cl. of Arr. John Glasbrook. (He was sworn.)
Cl. of Arr. John Goodlad.
Prisoner. I challenge him.
Cl. of Arr. John Gore.
Prisoner. I challenge him.
Cl. of Arr. Henry Ankey.
Prisoner. I challenge him.
Cl. of Arr. Lawrence Hatsell.
Prisoner. I challenge him.
Cl. of Arr. Robert Hackshaw.
Prisoner. I challenge him.
Cl. of Arr. Benjamin Hooper.
Prisoner. I challenge him.
Cl. of Arr. Jonathan Hicks.
Prisoner. I challenge him.
Cl. of Arr. Jeremiah Jennings.
Prisoner. I challenge him.
Cl. of Arr. Thomas Jordan.
Prisoner. I challenge him.
Cl. of Arr. William Kent. (He was sworn.)
Cl. of Arr. Richard Levitt, esq.
Prisoner. I do not except to him.
Sir *J. Jekyll.* I challenge him for the king.
Cl. of Arr. James Lamb.
Prisoner. I challenge him.
Cl. of Arr. Thomas Lingard. (He was sworn.)
Cl. of Arr. Stephen Lee. (He was sworn.)
Cl. of Arr. John Lane, esq.
Prisoner. I challenge him.
Cl. of Arr. John Lane.
Prisoner. I challenge him.
Cl. of Arr. Richard Lindsey.
Prisoner. I do not except to him.
Sir *J. Jekyll.* I challenge him for the king.
Cl. of Arr. John Mahew. (He was sworn.)
Cl. of Arr. Henry Mallett. (He was sworn.)

Then they were counted; and the twelve sworn were:

Sir Daniel Wray, knt.	John Glasbrook,
Joseph Chamberlain,	William Kent,
Thomas Davis,	Thomas Lingard,
John Davis,	Stephen Lee,
Joseph Emmes,	John Mahew,
John Farr,	Henry Mallett.

Then proclamation was made, as is usual in those cases.

Prisoner. I pray that George Flint, a prisoner in Newgate, may be sent for; and may be near me during my trial.

L. C. Baron. What is he in Newgate for?

Prisoner. For a fine.

L. C. Baron. Then he may be sent for.

Which was done accordingly.

Cl. of Arr. Francis Francia, hold up your hand. (Which he did.)

Gentlemen, you that are sworn, look upon the prisoner, and hearken to his cause.

"He stands indicted by the name of Francis Francia, of London, merchant: for that he being a subject of our most serene lord George, king of Great Britain, France and Ireland, defender of the faith, &c. not having the fear of God in his heart, nor weighing the duty of his allegiance; but being moved and seduced by the instigation of the devil, as a false traitor against our said lord the king, his supreme, true, natural, lawful and undoubted lord; withdrawing that cordial love, and true and due obedience, fidelity and allegiance, which every subject of our said lord the king towards him ought to bear; and designing, and traitorously intending, the government of these kingdoms, under our said lord the king duly and happily established, to change and subvert; and our said lord the king from the title, honour, royal estate, empire and government of these kingdoms to depose; and our said lord the king to death and final destruction to bring; and the person in the life of king James the second, pretended to be prince of Wales, and after the death of the said late king pretending to be, and taking upon himself the stile and title of king of England, by the name of James the third, to the crown, royal estate and dignity of king, and to the government of this kingdom to advance: the first day of September, in the second year of the reign of our said lord the king, and at several days and times as well before as after, falsely, maliciously, devilishly, and traitorously did compass, imagine and intend our said lord the king, now and then his supreme, true, natural, lawful and undoubted lord, from the title, honour, royal estate, empire and government of these kingdoms to depose, and to death and to final destruction to put and bring; and the said person, in the life of the said king James the second, pretended to be prince of Wales, and since the death of the said late king pretending to be, and taking upon himself the stile and title of king of England, by the name of James the third, to the crown, royal estate and dignity of king, and to the empire and government of this kingdom, to exalt. And that he the said Francia, to accomplish and bring about the said treason, and traitorous and devilish intention, did traitorously meet, propose, consult, conspire and agree with divers other traitors, to the jurors unknown, to raise insurrection, rebellion and war within this kingdom, against our said lord the king, and in favour of the said person, in the life of the said king James the second, pretended to be prince of Wales, and since the

death of the said late king taking upon himself the stile and title of king of England, by the name of James the third. And that he the said Francis Francia, for the more effectual completing and perfecting the said treason and traitorous intention, did propose, consult, conspire and agree with divers other traitors, to the jurors unknown, to require, solicit and procure, from divers foreigners and others, in the kingdom of France, arms, ammunition and money, to assist and help in the said war. And that he the said Francis Francia did traitorously compose and write, and caused to be composed and written, several traitorous letters, notifying the intentions and resolutions of him the said Francis Francia, and the said other traitors, to move and levy the said war; and requiring aid in the said war of the said foreigners, and other persons then in France. And the said letters so composed and written, and caused to be composed and written, did traitorously send, and caused to be sent to parts beyond the seas, to be delivered to the said foreigners, and other persons in France, and caused and procured them to be delivered accordingly, against the duty of his allegiance, against the peace of our said lord the king, his crown and dignity, and against the form of the statute in that case made and provided."

Upon this Indictment he hath been arraigned, and hath thereunto pleaded Not Guilty: and for his trial hath put himself upon God and his country; which country you are. Your charge is to enquire, whether he be guilty of this high treason whereof he stands indicted, or not guilty? If you find that he is guilty, you are to enquire what goods or chattels, lands or tenements, he had at the time of the high treason committed, or at any time since. If you find him not guilty, you are to enquire whether he fled for it. If you find that he fled for it, you are to enquire of his goods and chattels, as if you had found him guilty: if you find him not guilty, nor that he did fly for it, you are to say so, and no more; and hear your evidence.

Mr. *Cowper*, jun. May it please your lordship, and you gentlemen that are sworn: the prisoner at the bar, Francis Francia, stands indicted of high treason; in intending to alter and subvert the government of these realms, happily established under his majesty king George; to depose his majesty, to bring him to death, and to place the Pretender upon his throne.

The Indictment sets forth, that for this purpose the prisoner, the first of September, in the second year of the reign of his present majesty, and at several other days and times, at London in your county, traitorously compassed and imagined to depose and kill his most sacred majesty, and to place the Pretender on his throne.

And that for the more effectual performing such his intentions, he did meet, propose, consult and agree with several other traitors, to raise rebellion and war within this kingdom, against his majesty, and in favour of the Pretender. And that he did solicit men, arms and ammunition, from certain foreigners and others in France, to assist him in that rebellion. And that he did write, and cause to be written several letters, intimating this resolution, and requesting the assistance of such foreigners and others.

The Indictment charges further, that he wrote and composed such letters, and caused them to be wrote and composed; and procured them to be sent and delivered for that purpose. And this, gentlemen, is laid to have been by him done, contrary to the duty of his allegiance, against the peace of our sovereign lord the king, his crown and dignity, and against the form of the statute in that case provided.

Gentlemen, to this Indictment the defendant has pleaded that he is Not Guilty. If upon calling our evidence for the king, we shall prove this case upon him; it will become your duty to find him Guilty of the Charge.

Sir *J. Jekyll.* May it please your lordship, and you gentlemen of the jury, I am of counsel with his majesty: and, gentlemen, it is my part to open to you the substance of the Charge against the prisoner at the bar; and the nature of the evidence we shall offer to prove that Charge.

The prisoner stands indicted of the first species of high treason, mentioned in that ancient statute 25 Edw. 3, that is, compassing and imagining the death of the king.

The overt acts alleged in the indictment, to manifest that traitorous design of the prisoner, are three:

He is charged with consulting and conspiring, with other traitors, to levy war against the king, in favour of the Pretender to his majesty's crown:

With conspiring and agreeing to solicit and procure assistance, from foreigners, and others in France, to carry on that war:

And farther with writing traitorous letters, notifying his and his accomplices resolution to levy that war; and requiring the beforementioned assistance; and sending those letters into foreign parts for that purpose.

These are undoubted overt-acts of the high-treason charged upon him.

To make good this Charge, we shall shew, that about three or four years since, there was a correspondence begun between the prisoner and abbot Butler, an ecclesiastic of Cambray. That correspondence began on the occasion of a law suit in England; wherein one Mrs. Butler a relation of that abbot was concerned; which was recommended to the prisoner's care. But some time after (a gentleman, whose name it will be necessary to mention in the prosecution of this cause) Mr. Harvey of Combe, took upon him to make use of that correspondence, in order to transmit and receive letters to and from that abbot: and also to the duke D'Aumont, by the means of the prisoner.

Mr. Harvey, for some time, made use of the prisoner only to convey these letters forward and backward, under the prisoner's cover, directed to one D'Aulmay, alias Payen; who had married a near relation of the late duke of Ormond; to be communicated by D'Aulmay to the abbot, or the duke D'Aumont. But it seems, the prisoner having gained a knowledge of the tendency of Mr. Harvey's correspondence, (which was a treasonable one) he himself soon after came to partake of the guilt.

As it was at first a correspondence between the prisoner and the abbot, and afterwards between Mr. Harvey and the abbot, under covers; so afterwards, Mr. Harvey made use of the prisoner himself, to correspond with D'Aulmay. And in those letters you will find, that the prisoner does not enter into the correspondence as a matter that he was transacting as only for Mr. Harvey, but shews a great concern in it himself: He is importunate for assistance to the late rebellion from France; impatient for its coming, and anxious for the success.

The evidence we shall offer to you, to shew that this correspondence was thus carried on, will be this:

Informations being given to a noble lord, (then secretary of state) of a treasonable correspondence being carried on by Mr. Harvey, by means of the prisoner; there was a warrant issued to take the prisoner, and seize his papers. And upon the execution of that warrant, letters directed to the prisoner, and his copy book of the letters wrote by himself, and an original letter of Mr. Harvey's, were found in the prisoner's custody, and will be produced to you; and these were owned and admitted by the prisoner.

The letters themselves plainly speak the nature and traiterous effect of this correspondence begun by Mr. Harvey, and carried on with the participation of the prisoner. And, gentlemen, my lords the judges will tell you, that it is not couching such a correspondence in the cant of a law-suit, (as in the present case) or otherwise, that will screen an offender from public justice, in case a traiterous correspondence can be made manifest. If that would evade the justice of the law, it would be impossible for traitors to be brought to punishment. But that which puts this out of all doubt, is, that the sense which is put on these letters by us, and by the indictment; that very sense, or construction has been put upon them by the prisoner himself. For we shall lay before you the examination of the prisoner before the Secretary of State. In that he admits, that the subject matter of the letters wrote by D'Aulmay to him, to be communicated to Mr. Harvey, was the design of the Pretender's invading the dominions of his majesty. And those letters being one side of the correspondence, (I mean that which came from abroad) serves to evince or demonstrate the other part or side of the correspondence, which came from hence.

I shall not enter into the particulars of the letters; or state and reason upon matters in writing, without having them first read, whereby to lay a foundation for observing upon them. But the letters will be read to you: And we who are the king's counsel, do not desire you to put any forced or strained construction upon them. Nay, we desire you to put no other construction upon them, than what the prisoner himself has done already.

I shall say nothing to you, gentlemen, to aggravate the nature of the offence. I rather chuse to appeal to your judgments, than to excite your passions.

All that is desired of you, is, to give your best attention to the evidence; and to do justice, and discharge your consciences.

Attorney General. May it please your lordships, and you the gentlemen of this jury; I am also of counsel against the prisoner at the bar. The indictment has been at large opened and explained by Mr. Serjeant Jekyll. The prisoner is charged with high treason, in compassing and imagining the death of his majesty, in order to set the Pretender on the throne. The overt acts laid, are conspiring to levy that war and rebellion that broke out lately; and in applying to aliens, and others in France, for men and money for carrying it on.

It is notorious, that preparations were making many months for the rebellion that broke out in Scotland, September, 1715, under the earl of Marr; and in Northumberland in October after, under Mr. Forster; and the like were designed at Oxford, Bath, &c. in October, 1715. And men were listed and sent down for those purposes; as hath appeared on the trials of the persons who have suffered for those treasons.

The conspiracy was carried on with great secrecy: And though it had been long in agitation in favour of the Pretender; yet was not publicly known, till his majesty (upon the 20th of July 1715,) was pleased to acquaint his parliament, that he had certain notice of the Pretender's design to invade this kingdom; and that at the same time there were great preparations here to assist that intended invasion.

The defendant lives in Plow-yard in Fetter-lane, and goes for a Jew. When the duke D'Aumont, as ambassador from the French king, in the year 1713, was here, the prisoner came acquainted with the abbot Butler, called the Vidame of Cambray, and from that time he corresponded with him. The abbot had a relation of his name, Barbara Butler, who had a suit at law depending here, which he recommended to the care of the prisoner; and that I believe might be the beginning of the correspondence between them. There is a gentleman that has been named, Mr. Harvey of Combe; he also then contracted an acquaintance and familiarity with the duke D'Aumont, and abbot Butler, and corresponded with both. These correspondencies first began in the queen's time, and appear to have been carried on with great secrecy and caution, which in-

duce a belief they were then criminal; but I do not mention this, as if what was done in the queen's time would affect the prisoner upon this indictment, for it is laid only for treason committed against the king. These correspondencies were carried on, from the going away of the duke D'Aumont, till the prisoner was seized, which was occasioned in this manner:

My lord Townshend, then secretary of state, was diligent in his enquiries, and on the 16th of September, 1715, had a private information given him, that letters constantly came by the post from France, to Francia and Mr. Harvey, from the duke D'Aumont, and abbot Butler, and one Payen alias D'Aulmay de Coulange; and that the subject of the letters related to the Pretender, and that intended invasion.

His lordship was cautious, and did not immediately seize the prisoner, but staid the coming in of two posts from France, and gave orders for stopping all letters directed to the prisoner, to see what further discovery they would make: and having received further information by those letters, on the 19th of September, 1715, his lordship made his warrant to Joseph Smith, one of the messengers, to apprehend Francia, and seize his papers. He having received the warrant, went, together with Willcox another messenger, (who is since dead) to the defendant's house, and there seized his person, and at the same time his copy-book of letters. And it is extraordinary to find therein entered the copies of any letters relating to a matter of this nature. When they seized that book, he told them there was nothing in it, and that it was only his copy-book of his letters to his correspondents. They seized also several original letters, wrote from France to him by D'Aulmay alias Payen, which will be read to you. They then seized also in his custody an original letter of Mr. Harvey's to abbot Butler, dated January 9, 1714, which was sent to Francia to be transmitted beyond sea; but it seems Francia opened it out of curiosity, or by accident, and kept it. In it were figures for names and things, which he well understood. The prisoner was on September 22, 1715, examined before both secretaries of state, and the copy-book of letters was shewn him, and he owned it to be his book, wherein he entered the letters of his correspondency, and that the entries were made by himself or his son. D'Aulmay's letters were also shewed to him, and he owned that they were those that he received, and were found in his custody.

He at first seemed to be open and ingenuous, and the secretaries of state then thought him to be so. He told them in particular, when the correspondence began, how long carried on by covering Mr. Harvey's letters; and when altered, and the correspondence carried on only by Francia; and that the subject of the letters, wrote to him by Payen, was the design of the Pretender to invade his majesty's dominions; and he named persons, who were intended in them by initial letters of their names or titles. That M. H. was Mr. Harvey. My D. D. the duke of Ormond; M. B. lord Bolingbroke; Dd. the duke D'Aumont. He also explained Mr. Harvey's letter and the figures therein. That 22 was the duke D'Aumont; 6 the late French king; 17 the Tories; 8 the Pretender; and 9 his majesty king George; and signed his examination, and was sent back in the messenger's custody. But it appearing after, on further perusing of the letters, that he had not been ingenuous, but had concealed a great part of what he knew, he was further examined, and then changed his note, and thereupon, was committed to Newgate.

He was here twice before in order to be tried; the first time he was advised by his counsel (and he was in the right to follow it, and take all the advantages the law allowed him) to insist, that in the copy of the indictment delivered to him, there was a mistake of an *I* for an *A*, and therefore he had not had a true copy of his indictment; and thereupon the trial was put off. The next time he came, he made use of another privilege the law allows him, and challenged so many of the jurors, that there did not appear besides enough to make a jury. There were accidents afterwards, which occasioned the putting off the trial twice by the king's counsel, some of the witnesses being abroad on his majesty's service.

The indictment charges the prisoner with compassing and imagining the death of the king. And it is plain a conspiracy to levy war, to dethrone or to deprive the king of his liberty, is an evidence of imagining his death, for the war necessarily tends to that end. That this transaction which he was concerned in, was a design to have a rebellion raised here, and to bring in the Pretender, we do not doubt but we shall give you satisfaction of when we produce the letters, and you will observe that the prisoner hath so explained them: and if he had not, every body must so understand them.

The correspondence began in the year 1713, and continued to the time he was taken, which was on September 19, 1715. And so far we may read the letters in the queen's time, to shew the nature and beginning of it. At first he carried on the correspondence, only as a correspondence between Mr. Harvey and Butler, by covering Mr. Harvey's letters, and having the answers sent under cover to him; what he wrote in the covers, he has entered in his book; for Mr. Harvey was cautious not to let his letters go openly to and from him. And so for a good while Mr. Harvey's letters were brought to Francia, which he covered and directed to Butler or to D'Aulmay, sometimes by that name, and sometimes by the name of Payen, and sometimes by the name of Coulange, which is a way used by many in France, to take the name of the place where they live instead of their sirname. While the correspondence was carried on by covering letters, Francia in his covers wrote those matters that demonstrate he was privy to the correspondence, and you will understand it by Mr. Harvey's original letter.

Mr. Harvey is not before the court, and therefore we shall not meddle with him more than is necessary, to shew that while the correspondence was carried on under Francia's covers, Francia well knew the subject matter of the correspondence, and many times gave cautions to have to do with discreet persons, and to make use of people that do not babble.

The correspondence was carried on thus till about June, 1715, and then the way of corresponding was changed. For Mr. Harvey was advised to be more careful, and not to write himself; but whatever was wrote, it was agreed should be wrote to and by Francia. And so the correspondence was carried on between D'Aulmay and him, to the time of the prisoner's being apprehended. We have entries of letters of his for a considerable time in his copy-book: and it is surprising to me, and will be so to every man, that a man should enter copies of letters that carry such an evidence of crimes in the writer. In one of the letters entered in the copy-book, he writes to D'Aulmay, dated April 7, 1715, "to be cautious to avoid giving umbrage to those in power; and says, when I have any thing particular to write to you, I will do it by a strange hand, and will sign Jacques Chretien. Take notice of this, and provided you let me know you received this letter without its having been opened, I shall be easy."

From that time there is no entry of Francia's letters in the book; but we have a chain of letters from that time wrote by D'Aulmay to Francia, in answer to letters written by Francia to him, wherein D'Aulmay takes notice, "That Francia in his letters had complained that the invasion was delayed; and reproached those in France with backwardness, neglect and indolence; and the cause he knew of, would be undone for want of care."

In the reading the letters, we shall first produce that of Mr. Harvey, dated January 9, 1714-15, to Abbot Butler; which was found in Francia's custody, with his explanation of it; by which it will appear, he was fully acquainted with the subject of the correspondence while he covered Mr. Harvey's letters: And after that we shall produce the letters from and to Francia, in the order of time they were written.

It is remarkable, that the correspondence was so close, that scarce a post passed without letters from the one or the other.

The first of Mr. Francia's letters that we shall produce, is dated March 13, 14, 1714-15. He writes to D'Aulmay; "and desires to know what was in the story of the marriage between the Pretender, and one of the arch-dutchesses. For it is essential to the interest of your wife." She was a Butler.

D'Aulmay answers that, March 20, 1715, and writes, "That no mention was made of late of the marriage of the Pretender: And that he was of opinion, that would not be a sure way to bring his affairs to a happy issue. But that a party-war (that is, among ourselves) would be much more to his advantage."

March 10. Francia writes, "That there was a letter from the duke. D'Aumont, which it is wished may succeed better than the former; which have not been answered, though entirely for the affairs. Besides I am (by the way) to tell you, that persons of 50 or 60 thousand crowns a year, cannot with prudence run the hazard of losing such estates, unless more encouragement be given them. And that the misfortunes of a certain person are more owing to their being neglected on your side of the water, than to the party that is against him: So that if this continue, your wife must lose all hopes." This demonstrates, that the matter solicited for was criminal, for which the persons concerned might forfeit their estates; and is plainly a soliciting for succours.

April 2, 1715. D'Aulmay, in answer to this, writes, "He had communicated the complaints in Francia's last letter to the duke D'Aumont; and was assured all should be mended."

March 17, 1714-15. Francia writes to D'Aulmay, "He should be glad if he could find means to satify Mr. Harvey——That to deal with him as has been done, is no good policy."

April 8, 1715. Francia writes to D'Aulmay, in answer to his of the 20th; and tells him, "He is satisfied; and consequently we are now to expect every thing from your side the water."

April 18. He writes again to D'Aulmay, "That affairs are here in such a situation, that great preacaution must be used, to avoid giving umbrage to those who are in power. When I have any thing particular to write to you, I will do it by a strange hand, and will sign Jacques Chretien. Take notice of this: And provided you let me know you received this letter, without its having been opened, I shall be easy."

April 24, 1715. D'Aulmay writes to Francia, "That his letter came safe to hand, and bids him be easy. If Mr. Harvey, in these troublesome times, should think fit to make use of Mr. Chretien, he may."

These letters of Francia's are entered in his copy-book: But from this time there are no entries in the copy-book: Which is not to be wondered at; but rather that they were entered so long. But we have many original letters from D'Aulmay (alias Payen) to Francia; which appear to be answers to letters written by himself: And by what of them is repeated in the answers, it appears in his letters, great solicitations were for the Pretender's coming, and great uneasiness expressed at the delay. And therefore to quiet the conspirators in England, D'Aulmay gives frequent assurances that all things were preparing.

August 7, 1715. Which was after his majesty had notice of the invasion designed, and had acquainted the parliament with it; D'Aulmay writes to Francia: "You are in the right to inveigh against the indolence you reproach us with; but be persuaded, it is only so in appearance. I even hope, that by this time you have convincing proofs of it; and that suitable returns are made to the good dispositions on

your side: And that at last God, blessing the just cause of our friend, will let him gain his suit: At least, assistance and powerful solicitations shall not be wanting."

This needs no explanation. The suit of their friend, appears plainly to be the invasion of the Pretender.

August 10, 1715. D'Aulmay, under the name of Payen, acquaints Francia, that he received his of the 5th instant. Says he, "Pray be easy; before it be long you will be contented. The chief of the name of our friend the abbot, arrived here on Tuesday night in good health. He is very well pleased; and has reason to be so. He is preparing to return home with all expedition; and to take his friends with him, to pass the vacation there. I am this moment going to wait on him; and design to make one in the voyage with him, or to be with him soon after his departure."

August 21. D'Aulmay writes again to Francia, in answer to two of his of the 12th and 15th instant; "our friend's cause will soon be ready (God willing) to be tried: All preparations are making for it. The friend who is related to my wife has read your two letters, and is mightily pleased with them."

August 24. He writes again, "pressing him not to let a post go, without letting him know all that passes relating to the cause of our common friend. And he takes notice, that he had been so busy, that he had not had time to write to Treacher, but would do it suddenly."

This shews the difference between D'Aulmay's own suit against Treacher, and the Pretender's design, which he calls the cause of their common friend.

August 28. D'Aulmay, under the name of Payen, writes to Francia, acknowledging the receipt of his of the 22d instant; and saith, "If I could venture to acquaint you with the particulars of all that passes on the affair which you know of, you would be more quiet than you appear to me to be, and would accuse us of negligence less than you do. I know there are favourable moments, which it is dangerous to let slip. But will you not grant too, that it is the part of prudence to foresee all inconveniences; and to take proper and sufficient measures to enable us to surmount them all? This is what we are doing: Be satisfied of it; and that your friends are more earnest and ardent than ever to procure you all the satisfaction you can wish. Have patience therefore yet awhile."

September 3. Payen to Francia. "I received this instant yours of the 29th past. We have at last the misfortune to lose the greatest of kings. The German journey might be very proper: I wish it may be performed; the rather because for the reasons that you know of. Our preparations have been a little suspended, but not all broken; things going on always better and better. My D D* and MD† are in a house within half a league of this town, which a private person has lent them; where they receive all their friends, with whom they go to dine and sup every day. They are both in perfect health; and think quite differently from what they are reported to think: that is to say, they are what they ought to be; you may assure your friends of this."

September 6. D'Aulmay writes to Francia; "I have just now received your letter of the second instant. I desire you to continue to write to me directly; and if you had some trusty hand, other than your own, and that of your son, you would do well to employ it. I believe also, that a cypher for the principal names (which you might send me, and a copy whereof you might keep to make use of yourself) would be very necessary: for I will avow to you frankly, that this precaution seems to me to be very necessary."

Sept. 14. D'Aulmay, under the name of Payen, writes to Francia; "The contents of your last without a date were very agreeable to me, as well as to all our friends, who give you thanks for it. We knew already part of what you tell us about the cause of our friend; which will soon end (please God) to his satisfaction, or all appearances would deceive. As to my own cause, I cannot help telling you that my fate is very unhappy, to have to do with so dishonest a man."

Here again he distinguishes between his own cause, and the cause of their friend the Pretender.

There cannot be any doubt of the subject of this correspondence: every body that hears or reads these letters, must understand them to relate to the intended invasion; and if there were any doubt, (as there is not) Mr. Francia's confession sufficiently explains them.

It cannot be expected we can produce Mr. Francia's letters, to which the last are answers, they being sent away by him to France; but we insist that the answers to them take notice of his, and of the contents of them, with their being taken in his custody, and owned by him on his examination, to be those he received; and that he knew the design of them to be, the design of the Pretender to invade his majesty's dominions, is a full and sufficient evidence to prove the treasonable correspondence charged in the Indictment.

The Secretary of State did right in stopping the letters at the post-office, which were directed to the prisoner; but those letters having never been in the prisoner's custody, we shall not offer them in evidence.

In one of them D'Aulmay complains, that the correspondence was interrupted; and afterwards in another to Francia's son, he bewails his father's misfortunes.

It cannot be pretended that Francia was only a hand to convey letters from one to another; and that the correspondence was only Mr. Harvey's; and that Francia is only guilty of misprision of treason, in concealing the other's treason; for while he covered Mr. Harvey's letters, he also wrote in the cover those things,

* Duke of Ormond. † Lord Bolingbroke.

that demonstrate he was acquainted with the subject of the correspondence, and assented to, and assisted in the treason: and the law is plain in case of high-treason, that he that knoweth it before it be done, and assenteth to it, is *particeps criminis*, and guilty of the treason.

What he did was not in the dark, but knowingly and openly, and he expresses himself concerned that the business went on no better: that is making himself a party and a principal.

The method of our evidence will be this. These letters and copy-book were seized by the messenger, who brought them to Mr. Walpole, under-secretary to my lord Townshend: they were laid before the prisoner in the presence of both secretaries of state: he owned the book to be his copy-book of his letters to his correspondents; and the letters shewn him to be those he received, and that they were taken in his custody; and that that correspondence continued till the time of his being taken into custody; and that the subject thereof was the design of the Pretender to invade his majesty's dominions. We shall, for the better understanding of them, first read his Confession, and then the Letters; and when we have done this, we do not doubt but you will be satisfied, we shall have fully proved the charge laid in the Indictment against him.

John Fortescue Aland, esq. My lord, we will call our witnesses. Set up Mr. Smith.

Joseph Smith sworn.

Sol. Gen. You was sent, I think, as a messenger to Francia's house: pray give an account of every thing that passed there.

Smith. My lord, I have the honour to serve his majesty as one of his messengers: I was appointed to attend the secretaries office that day, being my day of waiting, which was September 19, 1715. I had a warrant delivered to me against Mr. Francia, but it being late I did not go to execute it that night. The next day I went to his house, in Plow-yard, in Fetter-lane; Mr. Wilcox, another messenger, went with me, and went into the house first; he went up one pair of stairs, and I staid below, and after he had been up a little time, he called me up, and told me there was the prisoner: he was then in bed, and there was a woman with him he called wife: we told him, we had a warrant against him for high-treason, and bade him get up. I asked him if he had any closet? And looking about, I saw one by the fire-place: I opened it, and the first thing I observed over-against the closet-door, upon a shelf, was a parcel of letters lying open in folio; I saw they were in French, and directed to the prisoner, and upon the desk there lay a paper-book.

Sol. Gen. Look upon this book; is this the book?

Smith. This is the book; it lay upon the desk, and I looked into it, and observed this writing at the one end of it; he said it was his son's writing, and then I shut it again.—I opened the desk, and looked over the papers; I found there several other papers and letters folded up: I took them out, and laid them upon the desk by the others. Then I searched the other parts of the closet, and laid all the papers by the other letters. I desired them to go up stairs, and I did so: and a person I saw just now in court, his son, went with me; and I searched the rooms and boxes, and found several other papers, and brought them down into the chamber where the prisoner was with Mr. Wilcox; I put up all the papers together, and said I had taken all things that I thought necessary, and desired to be going. The prisoner desired to stay and drink some coffee; we did so, and then brought him down to a house at Westminster. We carried the papers to the office, and delivered them to Mr. Horatio Walpole. When I was in the chamber with him, he seemed to be under a concern when I put up the book; and I asked him what that book was? He said it was the book of his correspondence abroad.

Att. Gen. Is this the book?—*Smith.* Yes.

Att. Gen. You say you saw several letters there, did you look into them?

Smith. I saw they were directed to Francia: there was a parcel lay open in folio; and others that lay folded up in the desk.

Att. Gen. What became of the book and papers after you had them?

Smith. We went with them and the prisoner, and delivered the prisoner into a house at Westminster; and then went to the office, and staid till Mr. Walpole came, and then delivered the book and papers to him.

Att. Gen. Did you deliver any papers to him but what were seized there?—*Smith.* No.

Att. Gen. What is become of Mr. Wilcox?

Smith. He is dead.

Mr. *Cowper.* What was it that the prisoner said about the book?

Smith. He said, That is my copy-book of my correspondence abroad, it signifies nothing. I afterwards observed some more concern than ordinary in him; and he said to me again, The copy-book of my letters signifies nothing.

Mr. *Ward.* How long had you the book and letters in your custody?

Smith. I received them about six or seven o'clock, and I delivered them the same day to Mr. Horatio Walpole.

Mr. *Hungerford.* How can you be sure this is the book?

Smith. Because I never parted with it.

Mr. *Hungerford.* Was it not out of your possession when you delivered it into the office?

Smith. Yes, then it was.

Mr. *Hungerford.* Did you set any mark upon the book?—*Smith.* No.

Mr. *Hungerford.* Did he say that which was wrote in it, was wrote in it by him?

Smith. He said, This is my copy-book of my letters to my correspondents abroad.

Mr. *Hungerford.* But how can you be sure this is the same book?

Smith. I made a remark of this writing,* as he sat dressing himself.

Prisoner. Who was it that carried the book and papers to the office, you or Wilcox?

Smith. I myself.

Prisoner. I know that to be false. How soon did you go out of town after you had lodged me?—*Smith.* In a day or two.

Prisoner. Did you not go that moment?

Smith, No; not that day.

Prisoner. To whom did you deliver them?

Smith. To Mr. Horatio Walpole.

Prisoner. Did you take no more books?

Smith. There were several books in your house, but I do not remember that I carried any of them away but this.

Mr. *Hungerford.* Did the prisoner own to you, that the letters wrote in that book were wrote by him?

Smith. He said, That is the copy-book of my letters to my correspondents abroad.

Then Mr. *Horatio Walpole* was sworn.

Sir *J. Jekyll.* Pray, Sir, will you give the Court and the Jury an account of this book and those letters; and how, and when they were brought to you?

Walpole. I remember the warrant for seizing the prisoner was dated the 19th of September, and that the day after Mr. Smith and Mr. Wilcox came into my room, and delivered to me a copy-book and a parcel of letters, which they said they took at Francia's house. I took them and kept them by themselves, to be produced when my lord Townshend should call for them. I remember that night Mr. Buckley came into my room, and I desired him to sit down and look them over with me; and accordingly he and I looked into them. The next day my lord Townshend sent for the prisoner, and I carried in the same book and letters, and laid them upon the table, and particularly the letters, they were laid open, and my lord examined the prisoner about them. They were wrote in French, and directed to the prisoner. My lord asked him, whether he knew the hand of those letters, and turned them all over, and shewed him the directions, saying, are these directed to you? He owned it. He owned that he received them. My lord asked him again, is this your book? He answered, it is; some of the letters are entered by me, and some by my son.

Sir *J. Jekyll.* Were they all the same letters that were brought to you by Mr. Smith?

Walpole. The same.

Sir *J. Jekyll.* Pray look upon this book; is this the same book?

Walpole. I am sure this is the book: this is the same book that Smith delivered to me, and said he took it at Francia's house.

Then several letters were shewn to Mr. Walpole.

* George Francia's name in large church text, at the end of the book.—*Former Edition.*

Walpole. I remember all these letters to be the same that I received from Smith.

Att. Gen. After the prisoner had been examined, what became of the letters?

Walpole. I took them back again. I kept them under lock and key, till my lord Townshend had occasion to use them, which was the same night that my lord examined the prisoner; then I took them back, and I constantly kept them till I went to Holland for the Dutch troops, and then I delivered them to Mr. Buckley.

Prisoner. And you can swear these are the same letters that were delivered to you. By what mark? You swear very home. What mark did you put upon those letters, that you can swear to them?

Mr. *Ward.* Pray, Sir, when they were in your custody, are you sure they were never delivered out?—*Walpole.* I am sure.

Mr. *Ward.* Do you remember one Jones, the gun-maker, on the other side the water, when he was under examination? Are you sure they were not delivered out by mistake to him?

Walpole. I do not know that they were.

Mr. *Hungerford.* Did you put any mark on those letters?

Walpole. No, I put no mark on them.

Mr. *Hungerford.* Then how can you know them to be the same?

Walpole. I perused them several times. I remember the hand, and dates, and directions.

Mr. *Hungerford.* Then probably you remember the number too?

Walpole. No, I do not remember the number.

Mr. *Ward.* Are you sure these are all the letters that were brought to you?

Walpole. No; there are not all the letters.

Att. Gen. We shall now call Mr. Buckley.

Then Mr. *Buckley* was sworn.

Att. Gen. Pray, Mr. Buckley, look upon this book and these letters, and acquaint the Court what you know of them.

Buckley. My lord, the day the prisoner was seized, I came into Mr. Walpole's room. He told me he had received that book and those letters that were seized at the prisoner's house, and desired me to sit down and read them with him. I did so. Afterwards, when Mr. Walpole went to fetch the Dutch troops, he delivered this book and these letters into my hand. Afterwards, my lord Townshend directed me to look into them, and see which contained passages most criminal, and to extract such passages, which I did accordingly out of several of them. I will look over them again, and then I can tell you whether they are the same.

Prisoner. By what mark?

Buckley. I can tell you by that which is stronger than any mark, I copied passages out of several of them.

(Then he looked over the letters one by one.)

I had every one of these letters from Mr. Walpole, and I know it certainly; for that

from every one of these I extracted some passages.

Mr. *Cowper.* Was you present at any time when the prisoner was examined?

Buckley. I was.

Mr. *Cowper.* Were this book and these letters produced to him at the time of his examination?

Buckley. He was examined by my lord Townshend and Mr. Secretary Stanhope, and I was called in to take his examination in writing; accordingly I did.

Mr. *Cowper.* Were the book and letters at the time of his examination produced to him?

Buckley. I cannot say that, for I was intent on my paper, writing the examination, and looking upon the prisoner, and hearing what he said. When I had written down what is in my hand, [Holding out the original Examination] I read it over to him distinctly and audibly; and he being asked whether he was willing to swear to it, and answering, Yes, I offered him his oath: and I offered him a New Testament to swear on. He said he could not swear on that book. But he took another book out of his pocket, and I swore him on that. I asked him whether this was true? He said it was. Then he signed it; and afterwards my lord Townshend signed it.

Mr. *Cowper.* Is the subscription of his hand-writing?—*Buckley.* It is.

Prisoner. You say I took an oath. On what book was it?

Buckley. Indeed I do not know, I believe it was an Hebrew book; Mr. Secretary Stanhope looked upon it.

Mr. *Denton.* Was he examined at any time after?—*Buckley.* Yes.

Mr. *Denton.* Was you present then?

Buckley. No.

Mr. *Ward.* How long were they in your custody?

Buckley. From the time that Mr. Walpole went abroad, till he came back again; and then I delivered them back to him.

Mr. *Ward.* Were they in your custody when Mr. Jones was under examination?

Buckley. I cannot tell; but I never did shew them to him.

Mr. *Ward.* Were they not delivered out on that occasion?

Buckley. No, they were not delivered out by me.

Mr. *Ward.* You say you read the examination to him. Did not he desire to read it himself?

Buckley. I do not remember it.

Mr. *Ward.* Was not he refused to read it?

Buckley. No, upon my soul.

Mr. *Ward.* Was you with the prisoner in Newgate?

Buckley. I was with him at his own desire; otherwise I had not gone to him.

Mr. *Ward.* Do you remember the days?

Buckley. No.

Mr. *Ward.* How often was you with him there?—*Buckley.* Twice.

Mr. *Hungerford.* Were there any offers made by you to him?

Buckley. I desire you would explain yourself.

Mr. *Hungerford.* Did you make him any offers, that upon his signing any paper, he should have his liberty?—*Buckley.* No.

Mr. *Hungerford.* Did you not mention to him his giving evidence against any other person?—*Buckley.* No, upon my soul.

Att. Gen. These questions ought not to be asked. It is an iniquity to tamper with any man; and therefore such questions ought not be put. If you have any witnesses, you may examine them.

Mr. *Hungerford.* Then we will examine to it.

Prisoner. Is that the book I swore upon? [shewing a book he had in his hand.]

Buckley. I do not know indeed; it was such a sort of book.

Att. Gen. I do not take that to be material, if it were the Alchoran. He had it in his pocket. But it is not his oath, but his confession that is material.

Mr. *Hungerford,* (taking the book into his hands.) I understand a little Hebrew. This is a book to pray by, not swear by. It is a collection of some Jewish prayers and rituals; I believe taken out of Maimonides. You had best send it the learned Monfalcon in Paris, he is compiling some critical observations upon the Eastern languages.

Mr. *Ward.* Did you put any mark on any of those letters?

Buckley. I did on some of them.

Mr. *Hungerford.* Where are the extracts you made out of them?

Buckley. I have some of them here. [Holding out some papers.]

Mr. *Hungerford.* What did you do with the letters, after you had made those extracts?

Just. *Pratt.* He tells you that he kept them till Mr. Walpole came back again, and then delivered them to him.

Buckley. Here is my name on some of them. The two initial letters of my name.

Prisoner. When was that mark made upon them?

Buckley. I do not justly remember.

Prisoner. That might be done yesterday, or since they were delivered out of his custody.

Buckley. I did it while they were in my possession, and before I delivered them back again to Mr. Walpole.

Lord *Townshend* sworn.

Sir *J. Jekyll.* We must desire your lordship to inform the Court, what your lordship knows in relation to the prisoner at the bar, as to the issuing out the warrant against him, and what happened afterwards.

Lord *Townshend.* My lord, having received information that there was a treasonable correspondence carried on between the late duke of Ormond, duke d'Aumont, Coulange and Mr. Harvey, in which the prisoner was concerned,

and was the channel in which the correspondence was conveyed; and that the pretence of it was a law-suit, but that the design of it was in favour of the Pretender; and that when they talked of the party, the Pretender was meant; and that they expected him to be soon here. Having reason to rely on this information, I drew a warrant to seize the prisoner and his papers. I had indeed before sent an order to stop all letters that came from France directed to Francia, by which I received a confirmation of the intelligence which had been before given me. Upon the issuing out the warrant, the prisoner was seized, and his letters were brought to Mr. Walpole.

The next day I sent for the prisoner to be examined, and ordered Mr. Walpole to bring me the papers, and sent for the prisoner in. The letters that Mr. Walpole brought in, were laid open upon the table, and the book lay by them. I asked him whether he knew the hand, and whether those letters were not for him? He owned the letters, but said he could not help what was in those letters, and that what others wrote to him could not make him guilty. As for what I have wrote (said he) I appeal to my book. That is my book, I appeal to that for my innocency. He did not appear obstinate, and I remanded him; and at night I sent for him again, and Mr. Secretary Stanhope was with me; I had in that time looked into more of the letters, I saw several initial letters of people's names, I asked him the meaning of them; and he gave me the account contained in this examination.* He seemed in a disposition to tell me all he knew; he gave me an account how this correspondence began, and was carried on; and then he came to explain the initial letters that were in those letters that were taken upon him, and in several other letters that I had intercepted. I remanded him again that night, having taken his examination in my hand.

A second examination was taken upon Mr. Harvey's letter; (which examination and the letter thereto annexed was shewn to his lordship.)

This is the very letter on which I examined him; he owned to me how he came to stop the letter, and not to forward it, and explained all those figures to me very distinctly. He protested that he knew no more, and made solemn protestations that he had said all he knew, and I was almost convinced he had; but in the consequence, I had reason to think he had not. But these two examinations were taken before me, one I signed alone, and the other Mr. Secretary Stanhope signed with me. As to the first, I believe Mr. Secretary Stanhope was gone out of the room before it was signed.

Sir *J. Jekyll.* I desire to ask your lordship, whether all the letters that were brought by Mr. Walpole were laid upon the table at the time of the prisoner's examination?

Lord *Townshend.* All that Mr. Walpole brought me were laid there, and I saw him take them back again.

Mr. *Ward.* I desire to ask your lordship, whether you heard that declaration read over to him?

Lord *Townshend.* I dare say I did.

Mr. *Ward.* Did he not endeavour to excuse himself from signing it, till he had read it himself?

Lord *Townshend.* I do not remember that, I do not know that he made any difficulty of signing it; but I am sure it could not be because he was refused to read it.

Prisoner. Was not there any reluctancy in me to sign it?

Lord *Townshend.* What do you mean? Have not I answered that already.

Prisoner. Did not you offer me some money to sign it?

Lord *Townshend.* I hope you cannot say a thing of so much infamy. After he had been examined, he complained to me of the misery he was reduced to, that his wife and family must starve, and represented himself as if he were at a loss for a supper: I told him he had nothing to hope for, or any room to expect any favour, but by making a clear confession. He went on begging, and said that his wife was starving; I do not certainly know whether it was the very night that he signed his confession or not; but I am sure it was not for that, but in pure alms, and because he begged so hard, I put my hand in my pocket, and gave him three, four, or five guineas, I know not which, in charity; and it was what I never could refuse any man that applied to me in that manner, and begged so hard. He said his brother would not look upon him, because he was taken up for high-treason, and he desired me to give him something in charity, which I did.

Prisoner. I desire to ask you, whether you ever bestowed on any body else the like charity? Pray my lord, name the man under your examination you ever gave five guineas to before? [At which there being a laugh round the Court.]

Prisoner. I must not be laughed out of my life; you did not answer me.

L. C. Baron. Propose your question to the Court?

Prisoner. I desire to know who he ever gave five guineas to besides me?

L. C. Baron. My lord says it was out of charity.

Prisoner. And that he never refused any body under his examination the sum of five guineas?

L. C. Baron. He does not say so; he says, he never could refuse his charity to people that begged as you did.

Prisoner. I had less need to beg than some others.

Mr. *Ward.* I have but one question more to trouble your lordship with, which my instructions lead me to; and that is, whether at the time when this examination was signed by the prisoner, he was not told of its being for some

* Referring to the Original Examination.

particular purpose, but that it should not be binding to him?

Lord *Townshend.* He did desire that it might not be made use of against him; I told him that depended on his behaviour, if he was ingenuous, if he dealt frankly and fairly, and declared all the truth, I would do all in my power that he should have mercy; I do not know whether it is proper to give my reasons why I am convinced he did not deal candidly; but on the perusal of the letters, I found he was not a bare conveyer of them, or came by chance to the knowledge of what he explained in them, but that he was wrote to, as one of the managers: On that I sent to him again, and told him plainly, he must know more of it. He stood it out that he did not, and then I sent him to Newgate: Soon after he was committed, his wife came, as Mr. Buckley informed me, and acquainted him that she was persuaded, if she could see her husband, that she could prevail with him to discover the whole: On that I gave directions to put him into the messenger's hands again, which was done; about a morning or two after, one Curtis, who was in the same messenger's house, brought a letter to the office, which he had found dropped by this man's bed-side. It was directed to his wife, and the subject was to bid her not afflict herself, for he found better company in Newgate than he expected, that the better half of them were in upon the government account; that he had said nothing of Mr. Harvey that could hurt him, nor could he; that the government had nothing against Mr. Harvey, but a general suspicion that he was against the government, which three parts in four of the nation were; and that he himself laughed at any thing the government could do against him the prisoner: When I found a man write in his stile, I could not but think he had not dealt ingenuously.

Mr. *Hungerford.* I would propose to the judgment of the Court, whether it is proper to give evidence of the substance of a letter without offering the letter itself.

Just. *Pratt.* This comes in answer to Mr. Ward's question. He asked my lord Townshend, whether there was not some promise that this confession should not be made use of against the prisoner? His lordship gives this account, and justifies himself, how he came to make use of it, and gives this as the reason.

Mr. *Hungerford.* But to give an account of the substance of a letter without producing it, I apprehend, is not according to the rules of evidence.

Sir *J. Jekyll.* If the counsel for the prisoner desire the letter to be read, it shall be read.

Att. Gen. Do you insist upon the reading of it?

Mr. *Ward.* If you will read it in the proper time, you may.

Mr. *Hungerford.* If in the course of the evidence the letter is not read, I do not press it.

Then Mr. *Horatio Walpole* was called again, and the Letter was shewed to him.

Att. Gen. Pray, Sir, will you give an account what you know of this letter, and how it came to your hands?

Walpole. This letter Curtis brought to me, and I made this mark* on it: He told me it was found in Francia's chamber near his bed-side, and this is the letter.

Mr. *Ward.* There is nothing proved yet of its being the prisoner's hand, its being found by his bed-side will not affect him.

Then Mr. *Buckley* was called again, and the Letter was shewed to him.

Sol. Gen. Pray, look upon this paper, and tell us whose hand-writing you take it to be?

Buckley. I never did see the prisoner write but once, and that was upon my being sent to him to take a confession he seemed unwilling to make; and then I sat by him while he was writing.

Sol. Gen. How long did he write then?

Buckley. About an hour, and I read it over.

Sol. Gen. Do you believe this to be his hand-writing?

Buckley. I not only saw him write then, but I have read a great deal in this book, which Mr. Walpole told me was taken at the prisoner's house, therefore being used to the writing in this book, and to what I saw him write, for those reasons, and no other, I believe this paper to be his writing.

Mr. *Denton.* Are not the letters of your name on this letter?

Buckley. Yes: when Mr. Walpole put into my hands all the letters, my lord bid me single out those that were fit to be extracted, and I did mark them that were extracted, and always kept them in my hands till Mr. Walpole returned, and then I delivered them to him: Those letters that I extracted, I marked; some other letters that were intercepted by my lord Townshend I did not mark, because they came to me at other times.

Mr. *Denton.* Did you mark that letter?

Buckley. Yes.

Mr. *Ward.* Can you be positive that it is the prisoner's hand?—*Buckley.* No.

Mr. *Ward.* Do you rely on the writing in the book?

Buckley. By that, and by what I did see him write, from thence it is that I conclude this to be his hand.

Mr. *Hungerford,* He attempts to prove his hand by two inducements, one that he saw him write, and the other is the book; therefore let him fix on those parts of the book, that he takes to be the prisoner's hand, and to be like this letter.

L. C. Baron. The book is not material; it is enough for a man to say, that he saw another write for an hour together, and then that he believes this to be his hand.

Mr. *Hungerford.* If that was the single foundation it was something; but he makes another foundation also.

* Shewing a mark upon the Letter.

Just. *Pratt.* We are going out of the way, the question is, whether this shall be read? In order to that, the method is to prove, that the witness is acquainted with the prisoner's hand-writing, and believes this to be his writing. He tells you he saw him write for an hour. He gives you a further reason, that it is like some letters in the book. If that were laid out of the case, the other would be sufficient without it.

Mr. *Hungerford.* A man makes two things the foundation of his judgment, his seeing him write, and the similitude of hands in the book, the most conclusive evidence would be, the similitude of the hand in the book, which others may judge of as well as himself.

L. C. Baron. That is no evidence at all; similitude of hands is no evidence.*

Mr. *Hungerford.* I am far from thinking it is, or that there is yet any evidence at all. Do you believe this to be his hand, only from your having seen him write, or from what you have observed in the book also?

Buckley. I say that from my having seen him write, and my having seen the entries in the book, I believe this to be his hand.

Just. *Pratt.* If you had never seen the book, but had seen him write for an hour; could you collect from thence that this was his hand?†

Buckley. No, I would not affirm it.

Mr. *Hungerford.* Then it is with us, and makes it necessary to look into the book.

Att. Gen. How came you to apprehend any one part of the book to be Francia's writing more than the other?

Buckley. By my eye-sight, and comparing it with this letter.

Att. Gen. Is it from your knowledge of seeing him write?

Buckley. Yes; and this writing being like this book.

Sir *J. Jekyll.* I desire this matter may be considered how it stands; my lord Townshend is examined touching the confession of the prisoner, and was asked, whether there was not hopes of mercy given him? My lord said there were, upon his making a frank discovery; but he tells you the prisoner was not entitled to mercy, because he had not made such a discovery, and then gives an account of this letter: I thought the counsel for the prisoner appealed to that letter, and would have had it produced to check the evidence given by my lord.

Just. *Pratt.* Since it is gone thus far, I think it would be proper to clear this matter.

Prisoner. I desire to know where Mr. Buckley saw me write for an hour together?

Buckley. It was in the messenger's house.

Just. *Tracy.* My lord Townshend was giving an account in answer to a question proposed by the prisoner's counsel, and gave his reason why he did not think the prisoner was frank. I did not think so (says he) because of a letter which was found by his bed-side. Says Mr. Hungerford then that letter ought to be produced.

Mr. *Hungerford.* If the account is no more than that my lord observed so upon that letter, there is no great harm in reading it: But I am still in your judgment, whether, when the contents of a letter is insisted upon, and repeated, that upon memory only, the letter itself ought not to be produced?

Then —— *Curtis* was sworn.

Sol. Gen. Look upon that letter; whose hand-writing is it?

Curtis. I believe it is Mr. Francia's.

Sol. Gen. Have you seen him write?

Curtis. Yes.

Sol. Gen. And do you believe it to be his writing?—*Curtis.* Yes.

Mr. *Ward.* How long have you been acquainted with the prisoner?

Curtis. While he was in the messenger's hands.

Mr. *Ward.* How often did you see him write?—*Curtis.* Several times.

Mr. *Ward.* Was you in custody at the same time when he was?—*Curtis.* Yes.

Sol. Gen. Where did you find this letter?

Curtis. In his chamber, by his bed-side.

Mr. *Hungerford.* I do not hear that he gives an account, whether he is so well acquainted with his writing, that he can distinguish it from any others?

Curtis. He told me it was a letter that he had wrote to his wife.

Att. Gen. The letter is in French: we have a translation of it; we must desire that the interpreters who translated it may be sworn.

Then Mr. *Bowyer* and Mr. *Ozell* were both sworn.

Mr. *Cowper.* Did you translate the letter?

Bowyer. I did, and afterwards I compared it with Mr. Ozell.

Mr. *Cowper.* Is that a true translation of the original letter?

Bowyer. I did make a true, genuine translation of it, allowing for the difference of language and stile.

Mr. *Cowper.* Was it the best and most exact translation you was able to make?

Bowyer. Yes.

Mr. *Cowper.* Mr. Ozell, have you compared this translation with the original?

Ozell. Yes, and I believe it to be a true translation.

[*Note.* That the original letter was delivered into the prisoner's hand during the time that the translation was reading; and Mr. Flint, who was permitted to stand in the bar near the prisoner, assisted him in comparing the original with the translation. The like method was observed, when the translations of the letters received by the prisoner were read; and when the letters wrote by him were read out of the copy-book, the copy-book was shewn to him.]

* As to this, see Sidney's Case, vol. 9, p. 817.

† See the Seven Bishops' case, vol. 12, p. 305. Hawk. Pl. Cr. book 2, c. 46, s. 52.

[*Clerk* reads.]

"My dear; All I exhort you to, is, to make yourself as easy as you can. I do the same and am well, having slept well last night; and the company here is much better than I expected; they are all Tories, and the major part for the government, that is sent hither for being so, according to their informations. Although all should fail, and my lord Townshend should do nothing, the business will be at an end in less than a fortnight. You know upon what account I am here, which cannot disgrace me. Be therefore comforted, and do not grieve. God will assist us. I neither know nor have said any thing against Mr. Harvey, nor can they do any thing to him, unless he has other affairs which I know not of; therefore you may assure that Frenchman, that is false, for I know nothing against that gentleman, which is not intirely regular. He may only be suspected of being a friend to the Pretender; but that was well known before; and if all who are so were to be punished, above three-fourths of the nation would suffer. Therefore I laugh at any thing they can do to me, all my sorrow is not to be with you; and I would not see you in this wretched place in which you can but grieve both me and yourself.—Adieu."

Mr. *Hungerford.* Pray, let me have the letters; I have a little French, and I would willingly see how they render the word Tories.

Just. *Pratt.* When did you find this letter?

Curtis. Upon the 27th day of November.

Sol. Gen. My lord Townshend, pray, be pleased to give an account of the occasion that this confession was not signed by both the secretaries?

Lord *Townshend.* I suppose Mr. Secretary Stanhope might be gone out of the room.

Mr. *Hungerford.* I would not willingly trouble my lord Townshend at any other time, and therefore would take this opportunity: I think your lordship said, that the letters that were stopped at the Post-office, were laid on the table, with the other letters, when the prisoner was examined?

Lord *Townshend.* I did not say that. The letters that were intercepted, I did first lay them before the king, and then put them into the same hands with the other letters.

Then Mr. Secretary *Stanhope* was sworn.

Att. Gen. Mr. Secretary Stanhope, we must desire you to inform the Jury, what you know about the examinations of the prisoner, and the confession he made.

Secretary *Stanhope.* I have here two examinations, one signed by my lord Townshend, the 21st of Sept. and the other dated the 22d of Sept. signed by my lord Townshend and myself. I was present at both the examinations: There has been an account given of the first, which is perfectly agreeable to what passed there, and my name is to the second.

There is annexed to this second, a letter, which we take to be Mr. Harvey's: I remember the letter: the hand is particular, and there are figures by way of cyphers. I remember very well this letter. It has been before the cabinet council. It was shewn to Mr. Harvey at the council table; he did not deny it, but shewed the utmost consternation when it was shewn to him; and desired that he might withdraw, and have the liberty to speak to one particular lord. The manner of his behaviour was such, as to induce the lords of the council to be of opinion, that he was inclined to confess what he knew; therefore they thought fit to let him withdraw, and go to the messenger's house; but his agonies were such that he stabbed himself that night, or the next morning.

I believe at twice we spent about two hours in the examination of the prisoner, and these examinations were taken from his own mouth; and I can be positive there is not a passage in them, that he did not repeat more than once or twice. The reason why my name is to one, and not to the other, may be, because the room where he was examined was next to the room where the council used to meet; and I believe I might be going in and out between the two rooms, and might not be there when he signed it; and therefore I might not think it proper to set my name to what I did not see signed: But I saw him sign that to which my hand is set; and I do not remember that he had any reluctancy to sign it. I read the first examination more than once or twice to him, and did myself examine him to all the particulars of it.

After the first night's examination, it is certain he behaved himself like a man not worth a groat, intimating as if he did not know how to get a supper: He represented himself in a pitiful condition, and it was at his going out of the room, that my lord put his hand in his pocket, and gave him something; what it was I do not know, but it was after he had signed his examination; for, after it, there was a good deal of conversation passed between him and me. I asked him several questions, as to his being in France, and about the countries he came from; and asked him as to several Spanish letters that were in the book, and other things of that nature.

Mr. *Ward.* Did he not desire to read over the examinations before he signed them?

Sec. *Stanhope.* I do not remember that he did; but they were read over to him, and he was asked to every particular by myself, some one particular might slip; but I did examine him, I think, to every particular, in order to have it altered, if he objected to it; and he did not express the least reluctancy. I saw him set his hand to one of them; as to the other, I cannot say, because the room was next to the room where the council was sitting; and I do not know but that I might be there.

Mr. *Ward.* Do you remember any thing particular that was said to him, that those examinations should only be laid before his majesty, and no other use made of them?

Sec. *Stanhope.* I do not remember any such thing.

Sir *J. Jekyll.* If he had desired to have read these examinations, would you have refused it?

Sec. *Stanhope.* It never was denied to any man to read his examination before he signed it, where I was present.

Sir *J. Jekyll.* Nor you would not have refused him, if he had desired it?

Sec. *Stanhope.* No, God forbid.

Mr. *Hungerford.* I am informed that the prisoner wrote some letters to my lord Townshend, complaining of some other use being made of his examinations, than was designed.

Sec. *Stanhope.* I received some letters from the prisoner, but none that I thought were of any sort of avail.

Mr. *Hungerford.* Did he complain of his not being suffered to read them?

Sec. *Stanhope.* I do not remember it; but I am sure it was not so. If he did complain, it was without any ground.

Prisoner. I desire a sight of the original letter, which Curtis said I owned. [Which was shewn him accordingly.] I never wrote one word of it; it is forged since: Any body will say it; it is not like my hand.

Mr. *Cowper.* Before the examinations are read, I desire the gentlemen of the jury would take an account in writing of the initial letters and figures they will hear read, and then will observe who are the persons meant and intended by them, according to the prisoner's explanation, when he was examined. Gentlemen, it is necessary you should understand, who are the persons that are intended by the letters and numbers. If you take them down, all the letters will read to the purpose.

L. C. Baron. Gentlemen, they desire you will take notice of the letters and numbers that are explained in this examination, because you will the better understand the letters that will be read to you: That is what they desire, and it will be for your satisfaction.

The Examination upon Oath of Francis Francia, of London, Merchant.

Clerk reads. This examinant saith, That about two years ago he became acquainted with the abbot Butler, otherwise called, the Vidame of Cambray, at the time when the duke D'Aumont was here; and afterwards, viz. soon after the duke D'Aumont left England, this examinant received a letter from the said Butler, then in France, recommending to this examinant's care a law suit, in which one Barbara Butler, a kinswoman of the said abbot's, was concerned; that this occasioned a correspondence between this examinant and the said abbot Butler, which, from a little before the late queen's death, hath lasted till within these few days past; during which correspondence with the said abbot, this examinant received from the said abbot several letters directed to Mr. Edward Harvey of Combe, and conveyed back several letters from the said Mr. Edward Harvey to the said abbot, which letters to the said abbot, from the said Mr. Harvey, were sometimes brought to this examinant by the said Mr. Harvey himself, and at other times sent by Mr. Harvey to this examinant.

This examinant further saith, That at such times during the said correspondence, as the abbot Butler was at Cambray, the said Mr. Harvey usually brought or sent to this examinant two letters, one directed to the said abbot at Cambray, and the other, either directed by Mr. Harvey himself, to the duke D'Aumont at the French court; or the said Mr. Harvey desired this examinant to direct the same to the duke D'Aumont, the said Mr. Harvey telling this examinant, that he did not send the said letters himself to France openly, because he would not expose himself to be reflected on for having friends in France, not that he cared a pin if it were known, because we were in peace with France, or words to that effect.

This examinant further saith, that the letters so delivered, or sent to him by the said Harvey, for the said abbot, or for the duke D'Aumont, were by this examinant sent over to France under a cover, directed to Monsieur D'Aulnay, alias Payen, at Paris; but about two months ago that method of correspondence was changed; for the said Payen, instead of inclosing his answers to the said Mr. Harvey in letters or covers directed to this examinant, wrote only to this examinant, but ordered him to shew to Mr. Harvey, or to deliver to him, what he so wrote to this examinant, which this examinant did accordingly.

This examinant further saith, that whereas in some of the letters lately written to him by Monsieur Payen, to be communicated to the said Mr. Harvey, and which were communicated to the said Mr. Harvey accordingly, and which being taken in this examinant's custody, were shewn to him; there are the letters M. H. and my D. D. and M. B. which seem to be the initial letters of men's names; he, this examinant, understood that the said letters M. H. stand for the aforesaid Mr. Harvey, and my D. D. for the duke of Ormond, and M. B. for the lord Bolingbroke; and this examinant verily believes that the subject of the said letters written to him by Payen to be communicated to Mr. Harvey aforesaid, is the design of the Pretender to invade his majesty's dominions.

Francis Francia.

Capt. Die 21 Sept. 1715.
Per Townshend.

The Further Examination of Francis Francia.

This examinant being sworn, says, That a letter shewn to him, and marked by him, which is hereto annexed, and is dated the 9th of Jan. 1714, and writ by Mr. Edward Harvey's own hand, was sent to him, this examinant, by the said Mr. Harvey, under a cover, in order to be forwarded to the abbot Butler in France: and

that this examinant, in opening the cover, accidentally broke the seal of the said inclosed letter, which made him detain the said letter, and not forward it, lest it should be imagined that he had opened the said letter out of a curiosity to read it. And this examinant further saith, that he verily believes that by No. (22) mentioned in the second line in the said letter, is understood the duke D'Aumont; and that No. (6) mentioned in the thirteenth line in the said letter, and wherever the said No. (6) is mentioned in the said letter, he, this examinant, verily believes it signifies and is meant to stand for the late French king: and that by No. (17) mentioned in the said letter, is to be understood the word Tories; and that wherever (22) is mentioned in the said letter, the duke D'Aumont is meant. And this examinant further saith, he verily believes that by (8) is to be understood the Pretender; and by (9) mentioned in the said letter, is to be understood his majesty; but that this examinant doth not well know what (24000,) mentioned in the said letter, stands for; neither can he tell what (14) stands for, mentioned in the said letter.

FRANCIS FRANCIA.

Jur. 22 Die Sept. 1715. Coram nobis, TOWNSHEND, JAMES STANHOPE.

Sir *J. Jekyll.* Now we will read Mr. Harvey's letter.

Mr. *Ward.* You cannot read that letter against the prisoner.

Sir *J. Jekyll.* He hath made it part of his Examination.

[*Clerk* reads.] *9th Jan.* 1715.

"Dear Sir; with great satisfaction I receiv'd yours of the 12th yovr stile, and the next time I write vnto 22* I will be svre to write on yovr behalf, just as yov mention, and I wish it may have the effect yov propose; but I remember very well the advice yov formerly have given me, that your great ones are good at words and fair promises, but slow at performing, if ever; therefore as I take yov to be my friend, I shall lay out no more money till I am repaid what 22 was pleased to promise me long agoe should be rymitted me if the Fau—en had not done it, no notice I meane the 130: 4—0 so long due, itt being abovt halfe I have bin ovt of pocket, and for my good will am sufficiantly scandalised as a friend to 22, and pentionar to (6)† nay and yov from tyme to tyme have assvred me it shovld be done, and still itt is the same, and so is like if you see itt not done.

"Now if you please only to remind 22 to send me a bill if he pleases for the 130: 4— I shall be obleged very mvch to yov, or otherwise I see it is lost, and yov only doe give me faire words, which realy is not like a trew friend, for I am sure I have not, or ever will omitt any one thing to serve (6) 22 nor yov pay'd or not, itt shall not trovble so I have 22 esteem; wee are now in a hurrey on chosing of parliament men, and how those things will goe, God above best dos knows; but this I will affirme ware those that are to chvse Jefte to them selfes to chvse no money from corte threats, nor any other indirect means vsed, all wovld be ovt of seght on the 17‡ side; and as it is, I hope all will doe well if 6 and 22 sticks to theire trew friends, and on no accompt forgett them and all theire good intentions. I desire you to lett 22 know, if my life lay att stake, I cannot get 30 such hovnds as I dare send to his friend the Co—t of To—ovs he desiers; but by March I hope I may, my good friend Mr. B—ne that yov mention in yovr directions, has given me two of his best bitches; they are fovre years hunting, and they shall be in whelp a're I take them: and one young one I daily will look ovt, tho' it is a thing quite ovt of my way, but to serve 6 or 22 I will do any thing tho' to the hazard of my life, and all I have.

"I have got for 22 two as fine and good gray-hovnd bitches as can run, and as handsome; the red and white one is three years olde, the other black and white, and but two; and one covple of stagg-hovnds, the bitch is entired, the other but 11 months old, large enough, and of the queen's hovnds breed; I have also a very fine hovnd of blood-kind, fit for a harbering hovnd, and would rvn vp to any hovnds; he is but 9 months old, and if 22 sends any one over with yovr ambasadore all shall be given him, or by any token, I will send them to Dover on notice: as to horses, here is a stone-horse I think will please; he is a bay, with a blace down his face, bvt by any till liked I dare not, so that mvst depend on 22 pleasvre, and if any I have, or can gett, or here of, I will, and I will also freely send in my own charge, one to helpe by as many as 6 or 22 shall please to command me; bvt this, as things now stands, must be done with cavtion; why would you mention byeing of stuffs to 22, he will fancy I have some self-interest in mind; I told 14 at dyner, that 22 was his humble servant; he assured me he was his real friend, I mean 22 and wovld write to him and wovld remind him of you, I dyne with him to-morrow; press 22 to think of his friends, it will be of service I am svre to 6 all looks well for 8§ and in my heart I think better than ever 9* every day loses himselfe, and for the 24000 it makes for 8† and 6. I am."

pray order things so as not to give offence to 22.

Att. Gen. We will now show the nature of this correspondence by their sending letters to and again, and shew when he came into it himself.

* Duke D'Aumont. † The French king.

‡ Tories. § The Pretender.

* King George. † The Pretender.

Mr. *Ward.* Are you going to offer any letters?

Att. Gen. Yes, out of his own book.

Mr. *Ward.* We humbly submit it to your lordship's judgment, whether they can offer any of these letters in evidence, the charge of the overt-act is general, that he wrote several treasonable letters: now a confession that there were several treasonable letters past, might support that allegation, or they may give evidence in general that he did write such letters. But we must be in your lordship's judgment, whether they can produce any particular letters, which are every one of them overt-acts themselves, and are not laid in the Indictment.

We think the law has guarded the life of a man by the stat. 25 Edw. 3. That though the intention is the crime, yet that must be declared by overt-act or deed, which must be charged in the indictment. And the late laws since the Revolution says nothing shall be given in evidence, but what is expresly laid in the indictment. Now if this be allowed of under such a general charge, to prove such a number of facts, which are not charged particularly in the Indictment, then all the security of that law will be eluded, and a man will be no more able to make a defence, than if it had been laid in general, that he conspired the death of the king; or it had been laid, that in order thereto, he had been guilty of several treasonable practices.

We insist that they cannot under this allegation give any evidence but what is correspondent to it, as any confession or proof in general; but they cannot enter into any distinct overt-act, which ought to be laid, and cannot be given in evidence unless expresly laid in the Indictment. If that act has any meaning, it is to avoid any such artifice as this; and it obliges them that are concerned for the king, to specify in the Indictment the overt-act they will go upon.

Mr. *Hungerford.* My lord, I think we have an objection to the reading these letters that cannot be got over. The law hath in all ages guarded the life of the subject against prosecutions for high-treason, and with a great deal of reason: the offence is great; the prosecutions supported with great power and influence, and the consequence great to the party concerned; for it is not only the loss of his life, but the ruin of his family and estate; his family must be infamous, and his estate forfeited; therefore the law hath guarded the life of the subject in a more particular manner, against these prosecutions, than against any other capital offences.

Before that happy law, 25 Edw. 3, the prosecutions in cases of high-treason were such, that no man could be safe against them. There was scarce any thing a subject could do, even any thing that did but give the umbrage of offence, but might be drawn into the compass of high-treason. In truth, the definition or description of high-treason before this act is so loose that it gave a colour for this proceeding. It was among other things, "Si quis aliquid egerit vel agi procuraverit ad seditionem domini Regis vel exercitus sui," &c. And in pursuance of this notion of high-treason, imprisoning an officer of justice, and officers cheating soldiers of their pay, killing a person going to list himself, &c. were before this act adjudged high-treason. And I can shew that some of those hard cases happened the circuit before the act. And therefore the legislature thought fit to ascertain what offences should be treason for the future. And our historians remark, that from the time of this law, the sword that before hung by a slender thread over the heads of the subjects, was then removed; and for this reason likewise the parliament is called Benedictum.

It is true, that the bare compassing or imagining the death of the king is treason, and it ought to be so; for in that precious life the common weale, the happiness of all the subjects is eminently concerned. But this act of parliament hath provided, that such compassing, &c. shall be proved by overt-act, that is, not by inferences, strained constructions, or rhetorical aggravations, and the like, but by plain proof of matter of fact. And I am bold to say, the intent of this law was perverted for some ages, by laying the charges of high-treason so loose, that the party could not tell how to apply his defence: and of this and other kinds, there had been several irregular prosecutions; such as those of col. Sidney,* my lord Russel,† &c. And for these reasons the late Act for regulating trials,‡ &c. hath provided, that no evidence of an overt-act shall be given but what is specially laid in the indictment: and such a certainty was intended, that the party might know certainly and exactly to what points to apply his defence.

If it should be admitted that what is done in this indictment is sufficient to answer this act, the intent of it will be eluded: for the intent is, that the criminal shall know how to apply his defence. The offence in this case is supposed to be in the letters; must not therefore the letters, or the substance be set forth? For my part I think they must, or they cannot be given in evidence. I can produce very ancient authorities to this purpose: and as to the modern ones, besides that in Dr. Sacheverell's case, I have one in my eye, which is Mr. Attorney's own authority (for which I shall always have a regard) in the Indictment against Gregg,§ which was a prosecution of Mr. Attorney's; there the letter was set out at length.

Att. Gen. That was not in my time; I was not Attorney then.

Mr. *Hungerford.* I beg Mr. Attorney's pardon; but he has been in and out so often, that I may have been easily led into a mistake,

* Vol. 9, p. 817. † Vol. 9, p. 577.

‡ 7 W. 3, c. 3, s. 8.

§ Jan. 19, 1707-8, at the Old Bailey, when sir Simon Harcourt was Attorney-General.

I have another very great authority, and that was in the case of Dr. Sacheverell: the question was put to all the judges for their solution, whether in all informations and indictments, for offences in speaking and writing, the words ought not to be particularly mentioned? This was the question proposed, and it was answered, that it ought so to be: your lordship's answer was, that you were of the same opinion with your brethren.* You, my lord, Mr. Justice Tracy, agreed in the same opinion, and so did the eleven judges then present; which was, that the words supposed to be criminal, whether written or spoken, must be expressly specified in the indictment or information. This I am sure is the greatest authority that can be in any case: it is the authority of all the then judges of England, who were but eleven, the lord chief justice Holt being then lately dead; so, my lords, to justify this objection, we have the precedents on our side, particularly of Coleman, Fitzharris, Gregg and Sidney; in all which cases the papers supposed to be criminal, or the substance of them, are inserted in the indictment. We have the authorities for us, ancient and modern, and we have the reason of the thing for us. It being the highest reason and justice that as the prisoner is now to have some days before his trial the names of his judges, viz. the pannel of the jury, so he should be apprized of his charge with so much certainty, as to know how to apply his defence; and we do not doubt, therefore, but we shall have your lordship's opinion in favour of our objection.

Sir *J. Jekyll.* We may offer this book and these letters, notwithstanding this objection. Mr. Ward did not go so far as Mr. Hungerford, that it is necessary to set them forth *verbatim.* As to that, I believe it was never done in any case: and as to Coleman's case, those letters are not set forth; but it is alleged, that they were wrote to procure the aid and assistance of the French king, as it is here said, that the prisoner's letters were to desire assistance from France to the rebellion here. If it be necessary to set forth the words in the case of a misdemeanor for a libel in the ordinary courts of justice, it is because the libel is the crime; but in the case of a treasonable correspondence it is otherwise; for there the letters are not the crime, but the overt-act of the treason, which is the manifestation of the crime. Besides, let it be considered what evidence are we going to offer; we offer the letters sent to him in answer to the letters wrote by him, and to require us to set them out in the Indictment is impossible; when we make it part of the Charge that the letters were sent to France, it is to mock us to call upon us to produce those letters themselves.

Mr. Ward seemed to admit, that the clause mentioned by him in the statute 7 Will. was grounded upon the 25 Edw. 3. For that old statute doth require, that a man be attainted by overt-act; and what doth 7 Will. do in that case? No more than to make plain what the law was before: for the words are, that no evidence shall be given of an overt-act that is not expressly laid in the indictment; and from thence the prisoner's counsel would infer, that no letters ought to be given in evidence that is not laid in the indictment: no, the act requires only that the overt-act be expressly laid in the indictment. Not that the evidence shall be expressly laid in the indictment. All that the court is to consider as to this matter is, whether the overt-act is not sufficiently laid in the Indictment; it will not be doubted, but that writing letters to excite rebellion is an overt-act. Then the question is, whether this Indictment doth not expressly allege this overt-act. The words in the Indictment are these; "Quodque prædictus Franciscus Francia, ad dict' Prodicon' et Diabolic' et Proditor' Intencon' et proposit' pred' ulterius perimplend' perficiend' et ad effectum redigend' postea scil' eodem primo Die Septembris, Anno supradicto nec non diversis al' diebus et vicibus tam antea quam postea apud London' pred' in parochia et Ward' pred, malitiose, diabolice et proditorie composuit et scripsit et componi et scribi causavit separales proditorias Epistolas notifican' intention' et resolution' ipsius Francisci Francia et pred' al' proditor' Jur' pred' adhuc ignot' ad bellum præd' contra dictum Dominum Regem nunc movend," &c. This is surely an express laying the overt-act of which these letters are the evidence.

I have been looking upon the case of my lord Preston; which though it was before the statute of 7 Will. yet my lord Preston was not without the assistance of counsel, though he was not allowed them in court. It is there laid, that he wrote several letters to inform the French king what the forces of the kingdom were; and the Indictment goes on to shew the purport of those letters. But in that case the letters are not particularly set forth: and yet that was never made an objection at his trial, or before judgment. In that Indictment is charged his writing letters, and they are described, and that we have done. This we think is sufficient, that is, that we are bound to lay the overt-act expressly, but not the evidence of that overt-act.

Att. Gen. This is a surprising objection; we admit there must be an overt-act laid in the Indictment, and that is all that the law requires; we must set it out so that we may apply our evidence to it: and the meaning of the statute is, that when you lay one overt-act, you must not prove another.

The instance that is given by the serjeants is very strong, and every body remembers Coleman's case, the writing letters is an overt-act; but it is not necessary to set them out, that being the evidence of the overt-act. In Gregg's case there was but one single letter

* See *ante*, p. 467.

which was set out, and that was stopped at the post-house.

In the case of libels they must be set out; and that was the opinion of the judges in Dr. Sacheverell's case in proceedings at law: but the course of parliament was held by the Lords to be otherwise. We have charged that he agreed to write letters; that he did write them, and send them; and now they would have us to set out those letters that are sent beyond sea: and if that were law, it would be impossible to convict any man of a correspondence abroad, because these letters were sent abroad.

If it was charged in the Indictment, that he wrote to a great number of men, it would not be necessary to set out the names of those men; this is a matter we do not need to labour much; for this last statute has not altered the law, as to the laying the overt-act, but only as to the proof; that when you lay one overt-act, you cannot prove another. I do not know that it could have been done before; so that that act, as to this matter, was only a declaration of what the law was before.

Sol. Gen. We think none of the cases instanced prove what is insisted upon in this case. That case of Coleman is mistaken, for the letters in that case are not set forth particularly, only the subject-matter and nature of them, as is here done.

They can instance no case where the indictment is for writing treasonable correspondence, that ever they were set out in the indictment; and to what a length would such an indictment be carried, if it should be done in this case.

Col. Sidney's case is against them; for there was a whole volume wrote by him, and there was nothing put into the indictment but the substance of a very little part; and that was col. Sidney's own objection: says he, "Am I to be found guilty for a little part that is culled out of the rest; when if the whole was put in, by comparing the whole together, it might not be possible to collect any treason from it?"

As to Dr. Sacheverell's case, that is quite different from this: for that was in the case of a libel, where the offence properly consists in the expression. But even in the case of libels, I must beg leave to deny, that the particular words must be set out in the indictment; for a libel may be set out in Latin, which is the better and safer way; and then if you set out the substance, it is sufficient. And if you may set it out in Latin, it cannot be true that you are bound down to the particular words, for Latin words and the English words cannot be the same.

The Act of Treasons says, no evidence is to be given but of the overt-act laid in the indictment. Now what is that overt-act here? It is writing letters, which is specially expressed, and the substance of them set out, which shews them to be treasonable. The inconvenience objected is nothing, unless it shall be supposed, that the prisoner may have wrote so many treasonable letters that he cannot recollect them all.

Besides, it is to be considered, that all these letters import a correspondence, and so are to be considered as many, but as one overt-act, it is entire, and it is unreasonable as well as unnecessary, that the whole correspondence should be set out. Therefore we think we have done what is sufficient, and that they cannot give one instance of a case where the treason consisted in writing many letters of correspondence, that the letters themselves were set out. For the design of the law before-mentioned was no more, than that it should not be lawful to lay one overt-act, and give evidence of another.

The treason is, the prisoner has imagined the death of the king; and the overt-act is, he has wrote several letters, that is expressly and specially laid; and then to distinguish these letters from all others, the substance of these letters are set out, notifying his intentions to raise a rebellion in this kingdom, and inciting those in foreign parts, to aid, assist and join with him.

But this objection may receive another answer, and that is, that there are two other overt-acts, besides his writing of treasonable letters, which are conspiring, consulting, and agreeing to raise a rebellion and insurrection in this kingdom, and soliciting aid and assistance from France: and these letters are very good evidence to prove those overt-acts; for I believe it will not be denied, but that these letters are evidence of a conspiracy, and therefore if they could not be read in evidence to prove the writing letters, because they are not set out in the Indictment, yet they may be read as evidence to prove a conspiracy.

Therefore we insist that we are right both in point of reason and of precedent.

Mr. *Ward.* My lord, I beg a word or two by way of reply: they say we have not mentioned one case where the treason is grounded upon letters, where they have been set out in the indictment: I believe they cannot shew one case where it has been otherwise; we insist upon the case of colonel Sidney and of Fitzharris.

Colonel Sidney's objection was, that they had not set forth the whole book; but they had set forth entire paragraphs, and that is what I insist they should have done in this case.

They would have it believed, that the act of parliament, 7 Will. is nothing, and that the law stands as it was upon 25 Edw. 3. It was taken to be a great point gained when that latter act was passed, and I am sorry it is like to have so little effect. But we insist that what is now offered hath all the ill effects that were before the making of the act. It is not that a man must be supposed to have wrote so many treasonable letters, that he cannot remember them; but he does not know which of his letters may be called so. And it was

opened that these letters were of such a nature, that they could not be understood without producing them. Therefore they ought to be set out, that so a man may know which of them to defend himself against.

There is one case like this, which is the case of the good name of a man: every witness that is produced may be examined to his credit; but you will not suffer particular facts to be proved upon him, because he cannot be prepared to maintain every action of his life. And that was intended in this case; that a man might be certain what he was to defend himself against, especially in the prosecutions from the crown, which usually come with a greater weight than other prosecutions. Agreeable to this have all the precedents been when any thing have been founded upon letters.

Mr. Attorney says, that the letters are sent into France: so that they cannot be produced. I did not object that they ought to be produced. But they are going to produce a copy-book to prove, that there were such letters, and by that they had the same opportunity to set them out, as if they had the letters themselves.

There is no inconvenience to the crown by this method, but the greatest inconvenience to the subject by omitting it; for he may have all the letters he ever wrote brought against him, and he must off-hand give an account of them.

[Mr. Ward, who had an hoarseness upon him, closed with saying, that his voice failed him, and that he could go no farther.]

Mr. *Hungerford.* The gentleman who is joined with me in the defence of the prisoner, complains that his voice fails him; (God be thanked) I have no defect of that sort, for I can speak pretty audibly, but I have a greater, for I had my instructions late last night.

Mr. Solicitor observes, that we are not entitled to have those letters set out either by reason or by precedent; as to the reason of the thing, I appeal to your lordship, whether all the laws relating to trials of treasons, and some others, which are to take effect three years after his majesty's accession to the throne, and the death of the Pretender, have not been grounded on this great reason, to guard the subject against prosecutions that have been sometimes carried on with too much severity. And as to what relates to the present case, that the overt act should be so particularly laid, as to describe the offence with so much certainty as to enable the prisoner to apply his Defence.

What is the intent of laying an overt act at all, but that the defendant may suit his Defence to it. If it is intended only that you shall not give evidence of a different overt act, as the king's counsel would expound it, that will be of little avail to the prisoner. It is of late grown to be the practice to lay the treason, to be in conspiring the king's death, and the overt act, to be conspiring to levy war, though by the way, that is making one article of the statute of 25 Edw. 3, redundant and useless; for if every intention of levying war doth imply an intention to kill the king, there was no need of making levying of war a distinct species of treason at all, for at that rate it was comprehended in the former. And as to what is said, that laying the overt act is a sufficient certainty of the charge, I think not; suppose the overt act laid, be levying of war, or an intention so to do; there are several instances of levying war, one way may be by mustering men, another by seizing some of the king's ships: these are so different, that upon a general charge of levying war, one perhaps may prepare to defend himself at sea, and may be attacked at land; and so *vice versa;* and by the general charge he does not know what to defend himself against. Therefore the intent of that act must be to give a man such a notice of the matter laid to his charge that he may know how to apply himself to his Defence.

I do not insist that the letters at large ought to be set out, but the substance of them, or the paragraphs in them, containing the words supposed to be criminal, so that a man may know how to apply to his Defence.

As to my lord Preston's Case, though he might have counsel to advise him, yet in his time he could not (as the judges had determined the matter) have a copy of his Indictment; so that he was outed of any observations that could be made upon it. Therefore if that Indictment is in the same manner with this, it will be no authority, for it might be irregular, as we insist this is, and yet there could be no opportunity to observe it so to be.

As to what Mr. Solicitor insists, that to insert the letters at large, would make the Indictment long and tedious: for God's sake, my lord, is there any competition betwixt the charge of two or three skins of parchment, and a man's life?

As for the precedents, I have here Coleman's Case, where the date and substance of the letter is mentioned; and in colonel Sidney's Case, the title of the book, and the paragraphs insisted on are set out: in Fitzharris's Case,* the letter is set out *verbatim.* As to what is said of Dr. Sacheverell's Case, that it was only for a misdemeanor. I am bold to say, the question was asked in general, whether in all indictments or informations, the words or writing supposed to be criminal, should not be set out. And surely if in a case of misdemeanor, where only fine or imprisonment is the punishment, so much certainty is required, much more certainty ought to be requisite in a charge of high treason, where loss of life, estate and posterity, are the consequence of the conviction. So that as I observed before, we have both reason and precedent with us, and they have neither of their side, and those precedents that are of their side, were before the late act of parliament.

L. C. Baron. The objection made by the counsel for the prisoner is, that though here is an overt act laid, yet it is not laid so expressly

* See vol. 8, p. 223.

as it ought to be. The overt act is, That he wrote several letters to foreigners, to move and excite a war, and sent them to foreigners beyond sea for that purpose. I think this is a sufficient description of the overt act, and that is as much as is required by the act of parliament. That Act says, That no evidence shall be given of any overt act, that is not expressly laid in the indictment. None can say that here is not an overt act expressly laid. If it is expressly laid, and sufficiently described, sure it is not necessary to mention all the evidence that is to prove the overt act, the intent of the law is no more, than that the overt act should be sufficiently described and charged in the indictment. It is here so charged and described, the design and intention of the letters is set forth, and they go to prove that such letters, manifesting such design and intention, were written, and that they have laid that he wrote several letters to move this war, then they go to produce the letters. I am of opinion, that they need not be more particularly described, and it would be endless to set out all the letters.

As to what Mr. Hungerford insisted on in Dr. Sacheverell's Case (which made a great noise formerly, and has made some noise now) the question there put to the judges, was concerning crimes and misdemeanors, by writing or speaking. As the crime of a libel consists only in the words, and therefore they must be laid in the indictment, he might as well have mentioned an action upon the case for words. There the words must be expressly laid, and they must be proved as they are laid.

But here the crime is compassing and imagining the death of the king, and the writing and sending of letters to foreigners to excite a war is the overt act, and that act is expressly laid in this Indictment, which is sufficient, without setting forth the words of the letters.

If it be laid, that a man did consult and agree to levy war, a time and place must be laid, but all the times and places when and where he met and consulted, and all the persons' names with whom he met and consulted, need not be mentioned in the Indictment, neither need the very words of the consultation be set forth. Therefore I think this overt act is sufficiently laid, and, as Mr. Solicitor observes, if there was no other act laid, but consenting and agreeing to levy war, they might prove it by letters, although no letters had been mentioned; but here the overt act is more particularly described, that he wrote letters for that purpose. Those letters are now offered to be read, and I think they ought to be read.

Just. Tracy. I am of the same opinion; I think they have sufficiently set out the nature of the overt act, writing letters, praying aid of foreigners to assist in a rebellion. Some of those letters are sent by the prisoner beyond sea, and they cannot be set out; and whatever is alleged as certainly as the nature of the thing will bear, is certain enough.

But it is objected, you have the copy-book, and you might set them out by that. But they do not go on that only, but also on several letters wrote to and received by the prisoner; and to set forth all those letters in an indictment, is against reason. But this is not the matter now, for Mr. Ward's objection was against reading the letters, which were offered to prove the writing and sending the letters as charged in the Indictment; but instead of shewing they are not evidence, you have run into exceptions against the Indictment itself; for uncertainty is not setting out the letters particularly, which is not the question now.

Just. Pratt. I am of the same opinion; many things have been said of the great care of the laws to preserve the life of the subject. I hope we shall always take a due care to put those laws in execution; but we must take care of that precious life, as Mr. Hungerford calls it, not to hazard it, by making it too difficult to convict any man of such a correspondence. And if we should make such a construction of the Act, as they contend for, it would be impracticable to convict any man in any case.

The Act says, the overt act shall be expressed, and is it not so here? It is writing letters, and with an intent to levy war against the king; so that it is mentioned that there were letters, and the purport of those letters is set forth. And whatever has been said of that case that was in the House of Lords, none of you can say, but that it is sufficient in informations for libels, if they are set forth in Latin, to set out the substance of the words. If a man sets it out *verbatim*, he is tied up to the very words, and by a letter or syllable mistaken, he may be gone: therefore the best way is to set out the substance only. Now what would you be the better, if you had what you ask, if there are several letters to the same purpose? It would only be setting out the same thing over and over again. This satisfies the meaning of the Act as fully as if they had been set out at large. But to say that a man shall be bound to set out the letter itself, when it is gone from him, when it is gone beyond seas, how can he come at it? If that were to be the case, a man might carry on a correspondence, and you could never convict him.

I think this is sufficient to answer the intent of the Act. They offer you letters that correspond with the Indictment, and if they offer any that do not, they will not be proper to be read.*

Att. Gen. We will read our letters as they are in time, and shew the nature of the correspondence.

Mr. *Ward.* I am informed there are different hands in that book: now whether your lordships will admit them to read it under a general proof of his owning it to be his copy-book,

* See East's Pleas of the Crown, chap. 2, s. 58, and the Cases of Coleman, vol. 7, p. 1; lord Preston, vol. 12, p. 645; Stayley, vol. 6, p. 1501, and Layer, A. D. 1722, as mentioned by him. Hawk. Pl. Cr. book 2, s. 55, 188.

or whether you will not expect that that which is his writing should be proved, and what is wrote by any other, to be wrote by his direction, or privity; for a small variance in the expression may turn a man out of his life.

Mr. *Hungerford.* All that the witnesses said was, that the prisoner said it was his copy-book. Now whether he is to be affected by every word in that volume, is what we must submit to your lordship; and whether they ought not to single out which were wrote by him, and which not; for his saying that is his book, that is, the volume is his, the cover is his, and the paper is his, but it will not imply that he is the author of all those letters.

Sir *J. Jekyll.* My lord, when they objected to our reading the copy-book, they ought to have made all their objections together; but this being in the case of life, I will not stand upon that.

It is plain, it ought to be read; for you observe the letters, of which these are copies, are supposed to be sent to France; and it is impossible to have them; then what certainties have we touching these letters? We have the taking the book in the custody of the prisoner, and if there had been no more than its being found in his custody, I apprehend we might have been let in to read them. But it goes a great way farther; for several of the witnesses swear that he owned it was his copy-book of his letters.

Let us consider how this evidence would have been, if it had been given to every letter in particular. If we had produced one single copy of a letter, and he owned that was a copy of a letter wrote by him, will any one doubt but that it might be read? Now the evidence say, that he owned this to be the copy-book of his letters.

Just. *Tracy.* Where the Court is in no doubt, we must not spend our time in arguing points that have nothing in them.

L. C. Baron. It is no matter whether any of them are of his hand-writing or not, I think they may be read.

Then the original letters and the translations were shewn to Mr. Bowyer, and to Mr. Ozell, who proved them to be true translations.

[*Clerk* read.] This is directed to Francis Francia, and dated Paris, Feb. 26, 1715.

Sir *J. Jekyll.* This is dated at Paris, Feb. 1715, but that is in our stile 1714.

[*Clerk* reads.]

"Sir; the base dealings of the sieurs Treacher and Robinson with me, made me always believe that you would not otherwise bring them to reason, than by pressing them without mercy. Since you have taken the trouble to begin, be pleased to continue to the last the same attention to my concerns which you have had hitherto, and never consent to any accommodation till they have remitted not only my disbursements, as you tell me by your last of the 18th instant, but also the whole of what may come to my share, either in money or wine, supposing there remains any unsold, which I cannot believe. As for the fourth share I have in the fifty odd hampers, which I bought for them of my friend, the count de Sillery, if, in order to enter upon any accommodation, you should content yourself with their consigning into the hands of Mr. Harvey the 2,500 and odd livres disbursed, be persuaded, Sir, that to get the remainder you will find yourself under the necessity to begin anew, to give yourself the same trouble which you have taken hitherto. Therefore while you hold them, I beg the favour of you to make an end of the matter with them at once, and in order thereto, not to give them any quarter. They have rendered themselves unworthy of it upon all accounts. If in this matter you think the interest of the chevalier (Sir Thomas) Hanmer, speaker of the last parliament, may be useful to you; he does me the honour to be one of my friends: Visit him from me: and I flatter myself he will readily grant you his assistance, when you have informed him how the case stands, and of the unfair dealing of those merchants towards me. I am so sensible of Mr. Harvey's favours, that I would do any thing to shew him my gratitude. Acquaint me therefore with the true state of his affair with the D. D.* and write to me about it in such a manner that your letter may warrant my speaking; after which I shall do my best to procure him the satisfaction he desires; be pleased to assure him of it from me. I hope that ere it be long you will acquaint me with the conclusion of my affair; in the mean time, I still assure you that it is not possible for any one to be more perfectly than myself, Sir, your most humble and obedient servant, D'Aulmay."

Sir *J. Jekyll.* We read this only for the sake of the postscript, which we will read presently.

Prisoner. This is not a true translation.

L. C. Baron. What is your objection to the translation?

Prisoner. There is not one word true in it.

L. C. Baron. Who do you depend on to translate it for you?

Prisoner. Upon Mr. Flint.

L. C. Baron. Tell us your objection to the translation; tell us in any one material part wherein the translation does not agree with the original.

Flint. One cannot carry it in one's head.

Prisoner. I hope you will not take it for a true translation when it is false.

L. C. Baron. We shall, if you do not shew wherein it is false.

Sir *J. Jekyll.* We will read the postscript, let them shew any mistake in that.

[*Clerk* reads.]

"As I have reasons of private concern to know what passes in the country you live in, you will sensibly oblige me in informing me of it now and then. Be persuaded of my dis-

* Duke D'Aumont.

cretion, and that the state is no ways concerned in my curiosity; nothing raised it but the concerns of my wife and her family, who is Irish."

Prisoner. That is wrong translated.

L. C. Baron. How do you translate it?

Flint. "You will oblige me sensibly to inform me of the same. Be persuaded of my discretion, and that the state has nothing in my curiosity: The interest of my wife, who is Irish, excites me."

Sir *J. Jekyll.* That is to the same effect as we read it. We will now read a letter from the prisoner to D'Aulmay, out of his copy-book.

[*Clerk* reads.]

Paris, Mr. D'Aulmay, de Coulange.
London, March 13-14, 1714.

"I received the honour of yours of the 26th past. I shall no ways spare the sieur Treacher, but prosecute him to a final judgment, which cannot be till July. He makes an apothecary's bill, sets down the wines that are sold, for this most part, at half a crown per bottle, but I shall prove him the contrary. I am very sorry this business should go so far, but it is according to the laws of this country, where we have no need of solicitations; without which he will, within that time, be certainly adjudged to pay. You must in the mean time transmit hither the original paper you have of your partnership in the wine; and without flattering you, a letter of attorney; for a letter of order will not be sufficient. You may leave a blank for the name of your attorney, which Mr. Harvey shall cause to be filled up as he shall think fit: But if you come to this town before the trial, as you told me, you may avoid all this. I shall take the care I have promised you without any question. As for the business of Mr. Harvey, with the D. D. the matter is, that he has disbursed about 200*l.* sterling: And that although the D. D. had sent to pay him what he had advanced, it happens that the person whom he intrusted with it did not do it: Therefore, if there were means to give the said D. D. to understand, without hinting that it comes from hence, that it is not just Mr. Harvey should be so long out of pocket, that would undoubtedly have the desired effect; for which I would, in particular, be very much obliged to you, &c. As for news from this country, I learn sometimes more in the Paris gazette than here, where the greatest part of the House murmurs to see the Low-Church flourish. The latter are very eager for a war, but they want the emperor and money. It is strongly reported, that a match is very forward between the prince who is at Lorrain, and one of the arch-duchesses: Let me know what is in it, since that is essential to your wife's interest. If, as I doubt not, an ambassador comes hither, I desire you to send me, by one of his domestics, 20 ells of fine Ras—de—St. Maur, very black, and at the cheapest rate, and order the bearer to receive the account, or acquaint me with it, that I may remit it to you. Forgive, I beseech you, this trouble, and believe me with a great deal of devotion."

Prisoner. He that commits a fault in any essential matter, may do so in the rest. They have opened all my letters at the post, and they have made this book for me; there is not one word of my writing.

[*Clerk* reads.]

Directed to Francis Francia, and dated,
Paris, March 20, 1715.

"Sir; I received yesterday the honour of your letter, dated the 14th instant; I confess to you that it is a very melancholy thing for me to be obliged to give you so much importunity upon the account of a knave, from what you wrote to me in your former. I hoped a speedier conclusion of my affair. Notwithstanding which, you tell me we must still wait till the month of July. This is a very long delay: But if there be an absolute necessity for it, we must even submit. Be that as it will, I beg the favour of you, Sir, not to give any quarter to such people who deserve none, for their dishonesty which they shew in its full latitude. As for the papers I have, I shall send you such as will be necessary for you, as soon as you shall write to me for them. But as for a letter of attorney, I have signed a general and very extensive one, on the 7th of August last, which is as particular and as strong as possible; there is a blank for the name, and it was sent to Mr. Arthur at London, by Mr. the Chev. Cantillon of Paris. The said Mr. Arthur having made no use of it, you may get it out of his hands and use it in your name, or in the name of such a person which you and Mr. Harvey shall think fit to pitch upon. I believe it may be sufficient, and that the said Mr. Arthur will make no difficulty to deliver it to you when you shew him this letter. However, I would cause Mr. Cantillon to write to him if it were necessary.

"You may assure Mr. Harvey, that I shall do my utmost to procure him satisfaction in the matter you write to me about, without exposing him to any inconveniencies. I have followed the court too long to be ignorant how to deal with our grandees.

Flint. It is "How to deal with our lords."

[*Clerk* reads.] "I shall endeavour to know precisely the time of the departure of the marquis d'Allegre, who is to go ambassador to London; and I shall charge somebody in his retinue with the 20 ells of black Ras de St. Maur, which you ask of me; if there be any thing else for your turn, let me know it. As you tell me you learn the news of England in the Paris Gazette; so I (*) you, that I learn from you the marriage of the Chevalier de St. George with the arch-duchess."

Prisoner. Is it Chevalier de St. George there? It is not so in the original.

* Torn in Original.

Cl. of Arr. It is Ch—— de St. G——.

Att. Gen. That is Chevalier de St. George.

Mr. *Ward.* That is no part of the key that was given by the prisoner.

Sir *J. Jekyll.* Read it as it is.

Mr. *Hungerford.* Let it be read then without a comment.

Mr. *Ward.* I wish the jury take sufficient notice, that some of these letters are not wrote by the prisoner, but only directed to him.

[*Clerk* reads.] "I learn from you the marriage of the Ch—— de St. G—— with the arch-dutchess. It is true, there was some talk of it when the peace was made with the emperor, but since that time no mention has been made of it. That in my opinion would be no proper way to bring his affairs to a happy issue. A party war would best suit with his affairs. God is above all; but I hope still, neither do I believe my hopes altogether ill grounded. I shall be glad in the mean time to see what turn affairs will take before I cross the sea. Wherefore I still desire you to inform me. I assure you, Sir, that I am more than any body else in the world your most humble and most obedient servant, D'Aulmay."

Sir *J. Jekyll.* The former letter from Francia desires to know what there is in the report of the marriage of the prince at Lorrain with the arch-duchess. This letter in answer says, it is true, there was some mention of it about the time of the peace with the emperor; but he is of opinion, that a party-war would be more advantageous.

[*Clerk* reads.]

Paris, Mr. D'Aulmay de Coulange.

London, March 10, (21,) 1715.

"Sir; By my last of the 3, (14) instant, I gave you an account of my proceedings against the Sieur Treacher, which I again hereby confirm to you; and that I shall get you (*) between this and July, or he shall fly his country. Here is a letter for Mr. le D. D. which, it is wished, may succeed better than the former, which have not been answered, though entirely for the affairs: Besides which, I must needs tell you by the bye, that persons of 50 or 60 thousand crowns a year cannot with prudence run the hazard of losing such estates, unless more encouragement be given them. You will be perfectly understood if you say this to some person familiar with that lord, or to himself: And I add from myself, that the misfortunes of a certain person are more owing to neglect on your side of the water, than to the party that is against him. So if this continues, your wife must lose all hopes."

Prisoner. If this had not been translated wrong on purpose, and with design to take away my life, there could not have been such a mistake made. There is a scratch at the bottom of the S to make it an L. It was Ses Affaires, His Affairs, and it is made, Les Affaires, The Affairs.

Whereupon the original was shewn to the interpreter, and viewed by the Court, and appeared to be a very plain L, and not altered from an S.

[*Clerk* reads.]

Directed to Francis Francia, and dated, *Paris, April* 2, 1715.

"Sir; I have delivered to M. le D. D. the last letter you directed to me for him; and when I insinuated that there was in it a complaint for not having received an answer to the former, I was particularly assured, that an answer had been written, and even in relation to what is due to Mr. H. That the same expressed a sorrow for not having cleared with him sooner; that some misunderstandings had been the occasion of it: But that however he was desired to mention the exact amount of his disbursements, as well for the private account, as for that of count de Thoulouse, and that the whole would be immediately put into the hands of the chevalier Cantillon, to be paid in London to Mr. H. This, Sir, is what I was told yesterday, and which I desire you to repeat to Mr. H. assuring him, that if he thinks me proper to serve him in something else, he will do me a real pleasure in employing me.

"The marquis d'Allegre does not seem yet very forward to set out for London; therefore if you are in haste for the black Ras de St. Maur, which you have wrote to me for, let me know which way you desire I should send it to you, and I shall do it immediately; you may depend upon it.

"I shall add nothing to the last letter I writ to you concerning the rogues our merchants; but I shall continue still to desire you to rid me of that affair as soon as you can.

"We have nothing new here; the works of the canal of Mardyke are, by orders from court, redoubled. I know not what success Mr. Cadogan's journey to Vienna has had; but we seem not to be very much uneasy at it: I have spoken, as you desired me, to the person for whom you sent that letter which you directed to me, and who has made me the fairest promises in the world; pray acquaint me with what passes in relation to Mr. Prior, since his return to London; and believe me still most perfectly, Sir, your most humble, and most obliged servant, D'Aulmay."

Paris, Mr. D'Aulmay de Coulanges.

London, March 17 (28), 1715.

"I received the honour of yours of the 20th instant: I can assure you had the king himself to do with the sieur Treacher, it would not be in his power to get him adjudged to pay before the month of July, and even in case the said (Treacher) do not appeal to the Chancery, which it is not probable he will do, because in such a case a merchant entirely loses his credit, and besides he should be obliged to deposit 300 pounds, for which I formerly arrested him,

* A word here wanting in the Original.

which would not at all suit with him: therefore, Sir, be assured that I shall do all that can be done, notwithstanding all his threats against me, for having been, says he, so bold as to sue him. I am only sorry, not to have begun sooner, and to have shewn him any civility. Mr. Harvey and I shall be very much obliged to you, if you can find an opportunity to have justice done him. I am persuaded, that to deal with him in this manner is no good policy, and if ever I have the honour to confer with you, I shall convince you, how by neglects (which however are not usual with men of your nation) most serious affairs have miserably miscarried. As for news, we hear nothing but an approaching war. It is even pretended that the Emperor is coming again into our measures, but I do not believe it: nor do I see any possibility of raising funds for a new war, at a time when people are at their wits ends to pay the bare interests of the debts contracted in the last. I am very much obliged to you for your intention to send 20 ells of cloth of St. Maur, by the opportunity of the marquis d'Allegre, or otherwise by any other that may offer: I likewise offer you whatever there is in this country, and if it were a thing of small bulk, we have often opportunities of friends who go over into France. Our parliament will begin their session very soon, they meet this day to choose a Speaker: we are going to see what will be the upshot of all the threats. I kiss your hands, and am——

" You may desire Mr. Cantillon to write to Mr. Arthur, to deliver to Mr. George Francia the letter of attorney he has in his custody; for I have reasons not to demand it myself of the said Arthur."

Paris, Mr. D'Aulmay de Coulanges.

London, March 28 (*April* 8), 1715.

" I have the honour to tell you that your's of the 2d inst. is come to my hands, and that I have given Mr. H. an account of the subject matter of your negociation. He is as well as myself, the more obliged to you for it, in that we believe we still have occasion for the continuation of your good offices with the D. D. What you say at the end of your letter, of your having spoken conformably to what I had desired of you, is sufficient, and therefore every thing ought now to be expected from your side of the water, that is to say, explanations, &c. I was advised, in order to prevent the sieur Treacher's removing the law-suit to Chancery himself, in which case he would become plaintiff, to call him before that court, that he may answer the interrogatives I shall put to him; which I have done, and he must answer the same within a month at farthest, and I shall pursue him close: it is the most able lawyer in this country, who does me the favour to give me this advice, which will hinder him from appealing, in case he should have a mind to it, which might have kept you in play several years.

" We see by the king's speech to his parliament, that there are yet no alliances made; and by the addresses of the Lords and Commons we perceive plainly that they have an itching towards a war; but at the same time they give to understand, that they know not which way to go about it: and besides the party of the pacific is far more numerous than the others, although the others have at present the majority of votes in the parliament; of which three parts in four of the House are highly incensed, and yet more to see they pretend to impeach certain persons of the last ministry, which will infallibly make a great noise: and if the Whigs would follow my advice, and I were willing to give them a good one, they should lie still. Mr. Prior is one of these pretended victims; his papers are looked over with malicious eagerness; he is taxed with having received great presents in France; particularly a great set of silver-gilt plate; I believe that if it be so, he is so much the richer for it. This is all that occurs at present, and that I am without reserve."

Paris, Mr. D'Aulmay de Coulanges.

London, April 7 (18), 1715.

" I am ordered to tell you from Mr. Harvey, that you will oblige him in desiring Mr. ' Le D. D. from him, to send hither somebody ' to fetch the horses and dogs which he has ' had so long, or else to give order to somebody ' to take them. Things are here in such a pos- ' ture, that great caution ought to be used, not ' to give umbrage to those in power, who may ' put a wrong construction upon the least tri- ' fles,' especially since the departure of my lord Bolingbroke, who is looked upon here as innocent, and people do not see how he could be any ways hurt, notwithstanding the superiority of the low party in parliament, which however is divided into two, who terribly cross each other, one of which parties will at last join with the Tories, if the latter are willing: we may draw consequences: the duchess of Portsmouth, who is at present here, gives a great deal of offence, as I am informed, by pretending to prove that the late king James had poisoned his brother Charles; it was not expected, that after so many years retirement into France, she should come hither to revive that vulgar report, which at so critical a time cannot be for any good purpose.

" I have nothing to add to the affair of your merchants, but what I have already acquainted you with. On the other hand, I confirm to you all that I have recommended to you to tell the person I wrote to last. Kissing your hands, I remain——

" We expect here shortly the marquis d'Allegre, for our ambassador at your court has orders to take a character upon him. I hope you will find means to charge somebody in the retinue of the former with the 20 ells of Ras de St. Maur, and 20 ells of taffety, with blue and white stripes, for a woman's summer suit; less than 20 ells would do, if it be broader than half ell, and if it be possible, to send at the same

time a scarf made of a good black silk pinked, for a woman of a moderate size, and slender, you will oblige me, and when you shall acquaint me with the price of the whole, I shall either pay it to the person who shall be charged with it, or shall remit it at your choice, &c. As for the scarves, they are sold ready made at the palace——

"Since what's above written, the honour of yours of the 12th instant is come to my hands. I shall cause your letter of attorney to be got out of Mr. Arthur's hands. There are at present great debates in the parliament: there was a member of the high party, who had the boldness to suggest, that this present parliament was illegally assembled, since the king in his proclamation gave the people to understand, that it would be a great satisfaction to him if they chose Whigs, which he said is against the fundamental laws of the kingdom; whereupon there arose high debates, and by the majority of votes, to the great surprize of the public, who expected that that member should be sent to the Tower, it was carried by a hundred voices, that the said proclamation should be examined; which it is thought will cause great divisions. 'When I have any thing particular to impart, 'I shall do it by a strange hand, and subscribe 'James Chretien, which you must take notice 'of, and provided you acquaint me that you 'have received this present letter without being 'opened, I shall be easy.'"

Directed to Francis Francia, and dated, *Paris, April* 24, 1715.

"Sir; I have received your two letters of the 8th and 18th instant, I am very much obliged to you for having removed to the Chancery the law-suit I have with Treacher, since you think it the most expeditious way to make an end of it: I still beg of you the continuation of your care, in order to compass the same; as also to acquaint me how that affair stands at present. I reckon that Mr. Arthur has by this time delivered to you my general letter of attorney, according to the order he has for it from the chevalier Cantillon, of which you will also be pleased to inform me.

"The time of the marquis d'Allegre's departure for London is not yet known here. I shall not then fail to desire somebody in his retinue to charge himself with the Ras de St. Maur, lutestring and scarf which you have desired of me.

"Your last was delivered to me very safe 'yesterday in the evening: be easy as to that 'matter, as well as to whatever Mr. James 'Chretien may write to me; pray desire him 'when he does me the pleasure to write to me, 'to be very particular as to facts, and to be 'well informed before hand: in all which I 'rely on your prudence. If during these 'troublesome times Mr. H. should think fit to 'make use of Mr. J. Chretien, he may:' but his letters should be directed to myself, and I should afterwards make what use of them he should think fit. Assure him still of my readiness to serve him, and that I should be very glad to give him marks of my gratitude, for the trouble he takes, as well as yourself, in my affair with Treacher.

"When the character of the duchess, who is lately gone to London, shall be well known, people will not be surprized at the part she actually plays there; but I hope it will produce a different effect from what she expects, and that we shall come at last to a happy unravelling. Mr. le D. D. was to send about a fortnight ago one of his men to London, to bring him his horses and dogs. If he is not yet gone, I shall not fail pressing for that matter.

"Pray let us hear from you as often as possible, and still believe me most perfectly, Sir, your most humble, and most obedient servant, D'Aulmay."

"My lord Stairs has not yet taken any character."

Directed to Francis Francia, and dated, *Paris, May* 1, 1715.

"Sir; I have received yours of the 25th past, with that of Mr. H. for the D. D. which I have sent to him into the country, where he is at present. At his return, I shall not fail telling him what you tell me about what is due to the said Mr. H. and in what manner he desires the same to be remitted to him. Assure him that in this, and every thing else, I shall ever do my utmost to do him service.

"By your letter of the 8th of April last, you acquainted me with the care you had taken to remove to the Chancery my law-suit with Treacher, by which means he would be obliged to answer within a month, and therefore I hope that in a short time you will acquaint me with the conclusion of that affair, for which I shall be very much obliged to you: I little know how justice is administered in such a case in England: but this I know, that in France, that honest fellow would long before now have been brought to reason; however, we must wait with patience to the end.

"Pray assure Mr. J. Ch. that I am, and shall be, very much obliged to him for what he shall write to me: he may likewise depend upon it, that I shall make good use of it; therefore let him continue to let me hear from him the oftenest he can; but above all let his news be certain, and very particular.

"There is yet no talk here of the earl of Stairs being near taking his character. I must also add, that it is not yet known, when the marquis d'Allegre will set out, but what is believed as certain is, that they will out of hand work upon the fortification of Mardyke: Draw your conjectures upon it.

"'I am very impatient to know what passes 'relating to the prosecution of the late ministry, 'particularly concerning the duke of Ormond, 'whose name my wife bears, and is his near 'relation, her name is Butler of Kilcom:' That family may not be unknown to Mr. H—— however the Ch. (sir Thomas) Hanmer knows it perfectly well.

"We have at present no important news in this country, unless it be considerable bankruptcies among those called *agioteurs* (or stock-jobbers), of which there are daily a great number, and such a scarcity of money, as passes all that can be expressed. I am still, Sir, your most humble, and most obedient servant.

Letter from Francis Francia.

Paris, Mr. D'Aulmay de Coulanges.

London, May 30, (June 10th,) 1715.

"My last to you was of the instant; this is to tell you, that without loss of time you must send another letter of attorney, with a blank for the name; for Mr. Arthur, after having kept us long at a bay, saying he would look for it, now says it is lost: be that as it will, you must revoke that letter of attorney, for we are here in danger, if Treacher should bethink himself of asking by what authority he is prosecuted, lest, not being able to produce any letter of attorney, this suit should be dismissed with cost; you therefore see the consequence: as for the rest, the affair is on a good foot, and I believe he will not stay till he is cast. Yesterday in the evening, being the anniversary of the restoration of king Charles 2, there were here great riots; nothing was heard among the people but curses against the present ministry, and long live James the third, and the duke of Ormond. This being so public, that it cannot fail reaching your parts, I acquaint you with it, and assure you, that I am, &c.

"'Mr Harvey salutes you, and bid me tell 'you, that when there is any thing new, if he 'cannot write to you himself, he will cause the 'sieur J. C. to do it for him.'"

Directed to Francia, and dated,

Paris, August 7, 1715.

"Sir; At this very instant I receive your last of the first instant. I will not cease returning you thanks for the care you are willing to take of my affair, desiring you still to continue to the end.

"'You have reason to be angry at the indo-'lence (or supineness) you expostulate about, 'but be persuaded, it is only so in appearance. 'I even hope that by this time you have con-'vincing proofs of it, and that suitable returns 'are made to the good dispositions; so that with 'God's blessing upon our friend's good cause, 'he will at last cast his adversary, at least 'no succours, or powerful solicitations shall 'be wanting.' Let me hear, I beseech you, about it as often as you can; and depend upon it, that by so doing you will oblige persons, who in a proper time and place will be thankful to you for it. The post (going off) presses me, therefore I conclude, assuring you still, that no man can be more truly than I am, —Sir, Your most humble, and most obedient servant, D'Aulmay."

Prisoner. That is wrong translated. In the French it is 'gagner sa cause,' which is 'gain his suit;' and they have translated it, 'cast his adversary.'

Mr. *Cowper.* He talks of powerful solicitations on our side, that is in France; and what could that be to a law-suit here?

[*Clerk* reads.]

Directed to Francia, and dated,

Paris, August 10, 1715.

"Sir; last night I received your last of the fifth instant; pray be easy and ere it be long you will be satisfied.

"The chief of the name of our friend the abbot, arrived here on Tuesday night in good health. He is very well pleased, and has reason to be so. He prepares to return home with all speed, and will carry thither his friends to spend the vacation time. This very moment I am going to wait upon him; I reckon to attend him in his journey, or to be with him soon after his departure. Pray, continue informing me the oftenest you can of your health, and of that of our friends: You know how dear they are to me, and what concern I have in them; therefore do not deny me that favour, nor that of believing me perfectly as I am, Sir, your most humble, and most obedient servant, Payen."

Mr. *Cowper.* Though this letter is signed Payen, yet it comes from D'Aulmay; he says the chief of the family is arrived here; that is, the duke of Ormond. And that he was to return from thence, and keep his vacation in England. Hitherto the correspondence was with the duke D'Aumont, but from this time it is with the duke of Ormond.

[*Clerk* reads.]

Directed to Francis Francia, and dated,

Paris, August 21, 1715.

"Sir; This is in answer to your two letters of the 12th and 15th instant. I should have sooner answered the first, had it not been delivered to me after the departure of the last post. Our friend's law suit will shortly, God willing, be ready for trial, every thing is preparing for it. The friend, my wife's relation, has read you two letters, with which he is very well satisfied. He desires you, as well as myself, to let us hear from you as often as you can. Since his arrival he has had two fits of a tertian ague, of which the bark has rid him. He was purged yesterday morning, and in the afternoon went to take the air, so that he is now in perfect health, and in a condition to attend his affairs with full liberty. I have not heard from Mr. H. and I do not believe he has changed his habitation; at least it is not come to my knowledge. The king has been indisposed for some days past, but without appearance of any ill consequence. Thanks be to God, who will preserve him to us a long time in his mercy.

"Half a dozen souls of Lower Normandy, and as many of Mans, must needs possess the body of Treacher, and inspire him with all the

chicanes he plays me. I shall write to him by the next post, in the stile you advise me, and agreeably to my own thoughts; for I swear to you, there is nothing I shall leave undone to get my right of so great a knave; I hope you will second me, and that you will give him no quarter. Pray acquaint me with what you have done upon this last incident, —Sir, I salute you, and am perfectly, your most humble, and most obedient servant,

"PAYEN."

Mr. *Cowper.* This explains that there was another cause depending, besides that of the law-suit: For he says, our friend's cause will soon be ready to be tried, all preparations are making for it. Now there was no cause depending in France, for this a French letter from D'Aulmay, and it is not pretended that there was any law-suit depending on that side the water.

[*Clerk* reads.]

Directed to Francis Francia, and dated, *August* 24, 1715.

"I am very much surprised not to have heard from you by the post that came in yesterday. Our friend was at my house expecting the same. We desire you both, Sir, not to let one post go off without writing to us, and acquainting us with what passes with relation to our common friend's law suit. When you see Mr. H. assure him that all our friends are perfectly well. The king's health grows better and better, heaven be praised.

"I have had so much business for some days past, that I could not write to Treacher I would do it speedily, but I still desire you not to give him any quarter, and to believe me perfectly, Sir, your most humble, and most obedient servant, PAYEN."

Sol. Gen. This shews a distinction between the cause of their common friend, and the cause of Treacher.

[*Clerk* reads.]

Directed to Francis Francia and dated, *August* 28, 1715.

"Sir; I received your letter of the 23d instant. Were I permitted to give you a detail of all that passes concerning the affair you know, you would be more easy than to me you appear to be, and charge us with less negligence than you do. I know there are favourable moments, which it is dangerous to let slip; but then will you not agree with me that it is matter of prudence to foresee all inconveniencies, and in order to that to take such right measures as to be able to surmount them all? This is now doing, be persuaded of it, and that your friends are more zealous than ever to procure you all the satisfaction you may desire, therefore be easy some time longer. You did me the pleasure to acquaint me, that on the 29th past, Treacher was adjudged to deliver to us his account within a fortnight, that he had since made a new chicane, demanding security for his charges, and with the measures you were pleased to take upon this demand. I therefore believed that after this we might hope to see an end of this affair, and that nothing now remained but to perform the judgment or rule of the 29th of July, nevertheless we are still put off to the month of October. Pray, acquaint me with the cause of it.

"We are here in a cruel uncertainty about an affair of the last importance, God grant it may have a happy issue. Pray, continue writing to me every post, and believe that I am ever with all my heart, Sir, your most humble, and most obedient servant,

"PAYEN."

Mr. *Denton.* This appears to be a letter in answer to Francia's, wherein he complains that things are not carried on with vigour; I know, says he, there are favourable moments that are not to be let slip; and then at last he concludes with the private affair of Treacher.

[*Clerk* reads.]

Directed to Francis Francia, and dated, *September* 3, 1715.

"Sir; I received this very instant your last of the 29th past, and as the post is going off, I have only time to write an answer. I did not write to you by the last post, neither did I receive any of your letters. I am extreme sorry for all the trouble I give you with respect to the law suit I have with that rogue, I shall still hope that through your care we shall both be shortly rid of him.

"We have at last had the misfortune to lose the greatest of kings, who, as undoubtedly you know it already, died on Sunday last at a quarter past eight in the morning, with all the sentiments of religion and greatness that were ever observed in the greatest heroes; and indeed it is generally acknowledged, that he never was greater than in the last moments of his life. Monday morning my lord duke of Orleans, accompanied by the princes of the blood, and the dukes and peers, repaired to the parliament, where he was declared regent of the kingdom with all the authority due to that dignity and his illustrious birth. All France is overjoyed to be under his government, from which they can certainly expect nothing but happy days, since no person in the world has more grandeur, equity, penetration, and virtues in general, than that prince. The journey to Germany would be proper enough, and I wish it may be performed, the rather because for the reasons you know; our measures have been somewhat suspended, though not in the least broke, things going on still better and better; be persuaded of it, as also that due notice is taken of your good will. In particular Mr. H—— must undoubtedly be where you were told, for he has not appeared here. It is true my D. D. and M. B. are in a house within a small half league of this city, which a private person has lent them, but they receive there

all their friends, with whom they go to dine and sup every day; they are both in perfect health, and their thoughts are very different from those that are ascribed to them, I mean that they are such as they ought to be; assure their friends of it. It is not possible for me to send to you to day what you desire of me, it will be for the next post. Let not one slip without acquainting me of your health, for which you know I am more concerned than any body else; and be persuaded that I am, more than any man, Sir, your most humble and obedient servant, PAYEN."

Mr. *Cowper*, junior. This letter gives an account of the death of the French king, and though things may be suspended, still they will go on, and it will be for the better.

Mr. *Denton*. The next letter is not directed to any body, it came under a cover which is lost; it appears to come from D'Aulmay, but not to be directed.

L. C. Baron. Is this one of them that was found in his house?

Mr. *Denton*. This is one of them found there, and owned by him.

[*Clerk* reads.] *September* 6, 1715.

"Sir; Your letter of the second instant was just now delivered to me. My last informed you, that it was only on the first instant we had the misfortune to lose the greatest of kings, but that for the comfort of France, God had reserved M. the duke of Orleans for our regent. I cannot write any thing that can be depended upon in relation to what you desire of me by your two last, as soon as there is any thing I shall inform you of it. Since the abbot B—— came into this kingdom, he has been very often in the country; he is still actually there; as soon as he is returned I shall not fail speaking to him according to what you write; as I have no intimacy with any merchant, and he must be one that I can depend upon to make use of his direction, I cannot give it you this day, but I hope I may by the next post; in the mean time, pray continue writing directly to me, and if you have any trusty hand, other than your own and your sons, it would not be amiss to make use of it; I even am of opinion that a key or cypher for the principal names which you may send me, and of which you should keep a copy for your own use, would be necessary, for I will ingenuously own to you, that such a precaution appears to me very necessary. You will find here enclosed the picture you have desired of me; it being impossible to send it to you without folding, when you have received it you must wet a cloth, which you will lay on a table, and will lay also the print upon it, which will take the plaits away. The post (going off) presses me, and I have but just time to tell you that I am your most humble and most obedient servant,

"PAYEN."

Prisoner. My lord, this letter is another hand, and there is no direction on it.

L. C. Baron. It was found among your papers, and you owned; that is proved by the secretaries.

Prisoner. This was pretended to be stopped at the Post-office.

L. C. Baron. No, it was found among your letters.

Sol. Gen. The next letter is very particular; he says the cause of the common friend will be at an end in a little time; but as to his own particular cause, he was unhappy to have to do with so troublesome a man.

[*Clerk* reads.]

Directed to Francis Francia, and dated, *September* 14, 1715.

"Sir; I did not write to you by the last post, by reason I did not receive your last letter, which by the bye is without date, till the day after its departure. Nor did I receive any from you by the post that came in yesterday, so that you owe me answers to my two last, which I expect with impatience, particularly an answer to my last, by which I sent you what you had desired of me. The contents of your last without date has given me a great deal of satisfaction, as well as to all our friends, who return you thanks for it, and have charged me to assure you of it, and desire you to continue. We knew already part of what you write about our friend's cause, which with God's blessing will soon end to his satisfaction, otherwise all appearances would be very deceitful. As for my own cause, I cannot forbear telling you, that I am very unfortunate in having to do with so dishonest a man, after having trusted my goods with him, and loaded his partner with services and civilities during his stay here. But my comfort is, that you will not give him a moment's respite, and that you will at last rid me of his unworthy chicanes. I could have wished the abbot had not embarked me with such people; although I am persuaded he did not do it with any ill intention, yet I find myself embarrassed with those scoundrels, whom I trusted only at his desire.

"The king went the day before yesterday to the parliament to hold his bed of justice, where the regency was confirmed to the duke of Orleans, with all the authority which such a dignity deserves. We have nothing else new at present. If any thing happens I shall not fail acquainting you with it. I am most perfectly, Sir, your most humble and most obedient servant, PAYEN."

"As we go at this time pretty often into the country, be not uneasy if perchance I should fail, some post or other, answering your letters regularly, which however will not be, except when I shall be absolutely obliged to it.

"Here is a direction which you may use for the future if you think fit. But in case you do, you must conform yourself to this model, and mark two strokes both before and after the word Paris.

"To Madam, Madam the widow de Beagué, merchant, at the Fair Star, Rue Tirechape. =Paris=."

Att. Gen. The correspondence now begun to be dangerous, and therefore it was to be directed to a woman, that there might be the less suspicion.

[*Clerk* reads.]

Directed to Francis Francia, and dated, *September* 17, 1715.

"Sir; Your last of the 9th instant, which I should have had on Friday last, was not delivered to me till Sunday in the evening. I ascribe this delay only to the winds, which may have hindered the packet-boat from having as quick a passage as usual. I have caused the three letters which you have directed to me, to be put into the post-house.

"My D. D. hath already shewed me the epitaph you have sent me, which with gentlemen will ever pass for the spring of Cerberus. I hope also that infamous author will sooner or later be rewarded according to his deserts. His insolence may even be attended with some unexpected consequences. We have, thanks be to God, a just and equitable regent, from whom we may hope every thing; he has already given us proof of it, by the good order he has settled in all affairs, which indeed had a great occasion for it.

"You must undoubtedly have received by this time the picture you desired of me, and I hope you will acquaint me with it by the next I shall receive from you.

"All our friends are, thank God, in perfect health. My D. D. had some days ago a slight fit of an ague, which had no consequence. 'We are here, as well as you, impatient to 'attain the end proposed. But we must take 'patience, and be ruled by those who are at the 'helm.' I still assure you, Sir, that I am, with sincerity, your most humble and most obedient servant."

Sol. Gen. We shall conclude the letters with a very particular one from D'Aulmay, which taxes Francia with impatience, and takes notice, that Mr. Harvey was eager for going into France; but it was the duke of Ormond's particular advice, that he should not go, because probably they might come over to him.

[*Clerk* reads.]

Directed to Francis Francia, and dated, *September* 23, 1715.

"Sir; In answer to your last of the 16th instant, I begin with telling you, that our friends are much to blame to throw themselves so precipitately into impatience, especially M. H. to whom you shall communicate this letter as soon as you have received it, and tell him he must by no means think of coming hither, as by your last you acquainted me he is preparing to do. It is my D. D. who charges me expressly with what I write to you, and who desires him to stay. He may easily guess at the reason, which will give you to understand, that this is not a time to be impatient, but to shew more resolution than ever.

"Perhaps some letters for me will be delivered to you; as soon as you have received them, I desire you to forward them to me, either with the directions I have sent you, or directly with my own.

"You know perhaps by this time, that it is pretended that there are at Havre-de-Grace two ships, on board of which are arms, which has alarmed some people, but without ground. For if that news be true, they must be arms that are sent as a present to the king of Persia, as I am told; therefore this ought not to make any body uneasy. As for the rest, Sir, let all of us recommend ourselves to God, and hope we shall soon be quiet; you at home, after your wise government shall have dissipated all the feuds that disturb the tranquillity, and we by the paternal and indefatigable care which my lord duke of Orleans takes upon him to procure us the repose which we have so great occasion for, and of which we have so long been deprived.

"You will judge of it by the list I send you of the councils he has lately established, and which are certainly made up of the most able, and most worthy persons in the kingdom. I expect to hear from you, and ever am, Sir, your most humble and most obedient servant,

"PAYEN."

"Whereabouts are we with our honest man? I hope you will acquaint me by your next."

Mr. *Denton.* My lord, the time when the king was pleased to acquaint the parliament with the design of the invasion, was the 20th of July.—We have a copy of the Speech examined.

Mr. *Paxton* sworn.

Sol. Gen. Have you examined this, and is it a true copy?—*Paxton.* Yes.

Sol. Gen. Where did you examine it?

Paxton. At the Parliament Office.

Mr. *Hungerford.* What did you examine it by?

Paxton. By the Journal of the House of Lords.

Clerk reads. "Die Mercurii 20 Julii 1715.

"His majesty, after conferring with the lord chancellor, spake as follows:

"My lords and gentlemen; I have given direction to my lord chancellor to declare to you in my name and words, a matter I think of the greatest importance.

"Then the lord chancellor spake as follows:

"I have received his majesty's commands, to deliver to you in his majesty's name this his majesty's speech now put into my hands by his majesty from the throne.

"My lords and gentlemen; The zeal you have shewn for preserving the peace of my kingdoms, and your wisdom in providing so good a law to prevent all riotous and tumultuous proceedings, give me great satisfaction; but I am sorry to find that such a spirit of rebellion has discovered itself, as leaves no room to doubt, but these disorders are set on foot

and encouraged by persons disaffected to my government, in expectation of being supported from abroad.

"The preservation of our excellent constitution, and the security of our holy religion, has been, and always shall be, my chief care; and I cannot question, but your concern for these invaluable blessings is so great, as not to let them be exposed to such attempts as I have certain advices are preparing by the Pretender from abroad, and carrying on at home by a restless party in his favour.

"Gentlemen of the House of Commons,

"In these circumstances I think it proper to ask your assistance, and make no doubt but you will so far consult your own security, as not to leave the nation under a rebellion actually begun at home, and threatened with an invasion from abroad, in a defenceless condition; and I shall look upon the provision you shall make for the safety of my people, as the best mark of your affection to me."

Sir *J. Jekyll.* My lord, we shall not trouble the court nor the jury, with reading any more letters; I only take leave to observe shortly, upon the letters which have been read. The correspondence began with a desire from D'Aulmay to have some correspondence about affairs here, because his wife was related to the duke of Ormond. Francia tells him, there was a discourse about the marriage of the Pretender with the arch-duchess, which, says he, is essential to the interest of your wife. D'Aulmay writes in answer, that there had been some talk of that marriage, but that he does not care to come into it: he thinks a party war would be much better. Francia writes again, that it cannot be expected that persons of fifty or sixty thousand crowns a year should run the hazard of losing such estates, unless more encouragement were given them. And that is followed by another letter from Francia, wherein he writes, that now we are to expect every thing from your side the water, that is, explications, &c. Then he desires him if he thinks proper, that he would change his name, and write by a strange hand.

There is this observable in these letters, that the prisoner plainly shews his desire that there should be an assistance for the Pretender from France; and so all the letters taken upon him fall into that design; nay, he was anxious and impatient for the critical minute. The death of the French king is taken notice of to be a great loss, yet he is assured that things will revive again; for that person that succeeded in the government had favourable thoughts and intentions.

The letters that are entered in his copy-book speak very plainly; and, gentlemen, what can be the purport of those letters of the prisoner's that are not entered, that cannot be sought for any where but in those letters, which were sent hither in answer to them, and he is so far from pretending that these were not letters sent in answer to his letters, that when he came to be examined, he told what the design of them was; that it was the design of the Pretender to invade his majesty's dominions; and therefore it now appears plainly to you, that he did solicit aid and assistance in order to an invasion from abroad, and an insurrection at home, in favour of the Pretender, and in order to depose his majesty.

Att. Gen. We shall leave it here, and submit it to your lordship and the jury, upon the evidence we have offered.

Mr. *Ward.* May it please your lordship, and you gentlemen of the jury, I am counsel for the prisoner, and what I shall humbly offer to your lordship before we go into our evidence, is a single point, we shall lay before you and insist upon; a particular circumstance in the indictment, which is such, that considering the circumstance of my client, it is impossible as the law stands, that he should be guilty in such manner as is charged in the indictment.

The prisoner happens to be an alien born, he was born at Bordeaux in France; he came from thence into England, and never was naturalized. He owes therefore no natural allegiance, nor can be guilty of any treason against the king as his natural liege lord, as it is laid in this indictment.

There is a distinction of a double allegiance, one that is due from a natural born subject, and the other that is due from an alien. The latter owes only a local obedience with respect to his protection, whereas the former owes it in respect of his birth. This is a distinction well known in Calvin's case. It appears, that if an indictment for treason be against an alien, it must be charged to be against his allegiance in general, but not against his natural allegiance. This is taken notice of in a great many cases. In the reports of my lord Hobart, Vaughan, and Keyling, there are several cases which shew this distinction.

In my lord chief justice Holt's time, in the Trial of Cranborn and Lowick,* April 22, 1698. an exception was taken to the indictment; that it was not said *contra naturalem ligeantiam*; and in that case, Calvin's case was agreed to be law. It was held, that in case of an alien, he owed only a general allegiance; and it was agreed, that in case of an alien, it must not be *contra naturalem ligeantiam*; and my lord chief justice Holt says, if it were so, it would be ill. And it may be given in evidence, that he is an alien, in order to acquit him of a crime, charged to be against his natural allegiance; there is none such due.

Mr. *Hungerford.* My lord, the objection is founded on a fact. If the fact is admitted, we

* See their Cases, vol. 13, pp. 221, 267. See also, Hawk. Pl. Cr. book 1, c. 17, s. 5. East's Pl. Cr. c. 2, ss. 2, 3, 4. That a person indicted for treason shall be taken to be a native of England until he prove the contrary. See vol. 14, p. 994.

will argue upon it; if not, we will call some witnesses to prove it.

Simon Francia sworn.

Mr. *Hungerford.* Pray, give an account what you know of the prisoner, what countryman he is, and where he was born?

S. Francia. He is my brother, he was born in France, at Bourdeaux.

Att. Gen. Are you elder or younger than he?

S. Francia. I am four years elder.

Att. Gen. How can you remember what was done when you was four years old?

S. Francia. I cannot remember the day of his birth, but I was bred up with him at Bourdeaux, we were all born in the same house.

Mr. *Hungerford.* What age was you of when you first remember him?

S. Francia. I remember him when I was about six years old.

Mr. *Hungerford.* And you do not remember that your father and mother came to England in that time?—*S. Francia.* No.

Mr. *Hungerford.* Did your father and mother live at Bourdeaux when you was about six years old?—*S. Francia.* Yes.

Then *Jaques Gonsales* was sworn on the books of Moses. And an Interpreter was sworn, because the witness spoke English very imperfectly.

Mr. *Hungerford.* Pray, give an account what countryman the prisoner is, and where he was born?

Gonsales. The prisoner is the son of George Francia, and Mary Gonsales my sister. He was born at Bourdeaux the 26th of March, New Stile, 1675.

Sir *J. Jekyll.* How do you know he was born there?

Gonsales. Because I was present when he was born. My house was over-against my sister's, who was the prisoner's mother; afterwards he was baptized in the Church of St. Andrew.

Mr. *Hungerford.* We have two or three witnesses more, his godfather and godmother; but I think it plainly proved by these witnesses, so that we need not go any further. Mr. Attorney, do you admit it, or shall we examine more witnesses?

Att. Gen. Prove what you can?

Mr. *Hungerford.* Then, Mr. Attorney, you admit what we contend for. I am sure if he be a good Englishman, he cannot be a false traitor.

Att. Gen. He speaks good English.

Then *Emes Lamira* was sworn.

Mr. *Hungerford.* Give an account whether you know where the prisoner was born?

Lamira. He was born at Bourdeaux, I lived there when he was born.

Then *Jaques Gonsales* was called again.

Att. Gen. How long hath the prisoner lived in England?

Gonsales. I cannot tell positively.

Att. Gen. As near as you can.

Gonsales. I cannot tell, for he has lived at one part of the town, and I at the other.

Then *Simon Francia* was called again.

L. C. Baron. How long ago did your brother come into England?

S. Francia. He hath been here twice. He was here about twenty years ago, and this last time, he hath been here about six or seven years.

L. C. Baron. How long did he stay when he first came?

S. Francia. About eight or nine years.

Then *Cecilia Ceres* was sworn.

Mr. *Hungerford.* What do you know of the prisoner? What countryman is he?

Ceres. I went to school with him at Bourdeaux.

Mr. *Hungerford.* Where was he reputed to be born?

Ceres. At Bourdeaux, in the same street where I was.

Mr. *Hungerford.* How old was he when you knew him first?

Ceres. We were both children.

Mr. *Hungerford.* I think the place of a man's birth cannot be better proved, it is proved by some that were in the room at his birth, some that went to school with him, and some that knew him there a child.

Att. Gen. If the jury should be satisfied with this evidence, it will not acquit the defendant, the opinion in Cranburn's case being, that the word, 'naturalem' was not necessary to be in the indictment; and adding an immaterial word will not therefore make the indictment bad. If this does not satisfy the defendant's counsel, I shall insist that this point be found specially.

Just. *Pratt.* If you insist that you have given a sufficient evidence to satisfy the jury, and indeed it is a strong evidence, Mr. Attorney says, if the evidence is to the satisfaction of the jury, he is willing to find it specially. Therefore are you willing to leave it to the jury on that single issue?

Mr. *Hungerford.* That is giving up all the rest. I would a little enforce and apply this evidence.

Just. *Pratt.* I believe, if Mr. Attorney-General desires it to be found specially, it was never known to be denied.

Sir *J. Jekyll.* I desire it may be found specially.

Mr. *Hungerford.* I will be bold to say, this objection is in all the authorities which we have in the law touching this matter, held good: a man who is not a natural-born subject cannot owe a natural allegiance: and it is very hard, that without offering any reason to raise a doubt, but upon bare asking to have a matter found specially, it must be so.

Att. Gen. If you have a mind to it we will debate it with you now.

Mr. *Hungerford.* With all my heart, I am ready to speak to it now.

Sir *J. Jekyll.* If we were to expect the judgment of the Court upon it now, I would debate this matter now, and I should not doubt but to be able to satisfy the Court that the Indictment is well framed against the prisoner, notwithstanding he is an alien born.

Mr. *Hungerford.* I would be glad to hear one authority to support sir Joseph's opinion.

Mr. *Ward.* May it please your lordship I am counsel for the prisoner, who stands indicted of high treason. The charge in the Indictment (besides the general charge of imagining the king's death) are conspiring to levy war, soliciting aid from abroad, and writing letters for that purpose into foreign parts.

What they have gone upon has been a long course of letters between the prisoner and D'Aulmay, alias Payen, at Paris. They have produced a copy-book of letters, which they say he wrote, and have read some letters out of it, which we must submit to you, whether there is any thing contained in them that amounts to treason. They have also produced letters to him from D'Aulmay, but we must submit that likewise, whether they can any ways affect him; he can answer only for what he wrote himself.

We did insist upon it, that they ought not to produce any letters that were not specified in the Indictment; and though we are over-ruled in that, yet your lordship will be pleased to consider the prisoner under this disadvantage, that he stands indicted for writing treasonable letters, without one letter specified, or the date, and much less the substance of it, so that he cannot be supposed to be ready to offer any evidence, or to give any answer, to explain all the letters that in the course of his life he may have wrote, and perhaps some of them may be so darkly penned, as not to be capable of an explanation on a sudden.

It may be necessary also to shew your lordship the difficulties we have been under since we were taken up, and that will make it necessary to shew, that when we were committed, it was to a strict confinement; we were prohibited from any body coming to us, and from pen, ink and paper; nobody had access to us, unless some persons from the secretaries' office, to press us to some discoveries, which we declared we could not make. We will shew by them that were by at those times what we were pressed to, and that will be an evidence of our innocence, when we withstood such importunities.

They have offered some things, which will, I hope, go a great way to shew that he was not guilty of treason. My client was a stranger, born in France, came here to trade, and his business not being very successful, he was willing to undertake something of less value, and so engaged in sending letters from the gentleman that hath been named, for the profit of double postage, which is allowed in those cases.

It was observed by the king's counsel as a very strange thing, that a man should enter in his book letters of a treasonable nature; we say the same, and that is a circumstance to shew that they were not of that nature; besides, the entry of a letter in a copy-book is not like a copy that the law allows to be given in evidence, that must be carefully examined; but in those entries of what a man writes over to his correspondents, there may be mistakes in them, and such as a man's life, in case of high treason, may be lost upon; therefore you cannot found so great a certainty upon this book as upon the letters themselves or copies examined and legally proved.

Another circumstance to shew how unlikely it was that this was a treasonable correspondence, or any thing that the prisoner was concerned to conceal, is, that he never took care of attending at the post-office, or engaging any one to attend there, to dispatch or take care of his letters, but rested at home till the letter-carriers brought them about, or else they were left at one Everald's, a watchmaker in the Strand, where he had lodged, and they have been observed to lie there on a table in a common room for a week together before they have been called for, or they have been sent to him.

It has been observed by the king's counsel, that towards the latter end of the correspondence, when he began to write more openly, that he neglected to enter his letters in the book; but there is no reason for that surmise, for it appears upon one of the letters they produced from D'Aulmay, that he complains he had not heard from the prisoner in three months time; and to suppose those letters which do not appear, worse than those which do, is a presumption, we hope, will never be admitted in a case of life.

As the prisoner himself could not apply himself to consider of any account or explanation of these letters, much less can it be expected that we who are his counsel can be of any service to him in that point, because we only hear those letters read that the king's counsel think fit to produce; there were others before and after, and those we are strangers to; whatever there may be in them that may clear up the expressions in those that are produced by the king's counsel, we are entirely deprived of the benefit of them; for the prisoner has not been admitted to peruse his own book, or to have recourse to any of his papers. The power of seizing papers, that may be of use to a man in his defence, seems to me something dark; but I shall say nothing to it in this place.

We shall give your lordship an account of the prisoner's character and circumstances. He was under low circumstances, even to the pawning his clothes and goods. People that are concerned in things of this kind, are usually better supported than he seems to have been. And we shall shew that he has at all times given all instances and proofs of his being quiet under the government, and well affected to it.

Under these circumstances, if there was

stronger evidence than is in the copy-book, it would not be sufficient. I hope, gentlemen, you have distinguished between those letters in the copy-book and those that were sent to him, which latter, how criminal soever they may be, cannot be made use of to his prejudice.

If we prove these circumstances, which is all that can be expected from us, we hope you will not think any thing in these letters a sufficient evidence to find him guilty of this crime. And, gentlemen, if any of those letters can have such a construction, yet, considering the nature of the copy-book, and the manner of keeping such books (which has fallen more under your observation than mine) and how void of care he was in managing those letters that came to him, you will not think it probable that he was engaged in a correspondence of such a nature; and if any thing looks that way, it may either be a mistake in him that entered the copies, or might be explained, if we were masters of the rest of the letters, and of the book.

Mr. *Hungerford.* My lord, I shall take up but a very little of your time till we have gone through our evidence, and then shall apply myself to make some remarks upon it. But in general, the accusation contained in this indictment is, that this man has conspired to take away the life of the king; the overt acts laid are, that he conspired to levy war, and endeavoured to engage assistance from abroad, and wrote letters, and sent them to divers persons beyond seas for that purpose.

Gentlemen of the Jury, I am sure you must observe, that as to a direct proof of his intending to take away the truly precious life of the king, there is none, but what is endeavoured to be inferred from these letters. If there were, I am sure I should not, and, I believe, none of my profession would have spoke one word for him. But all that is said arises from himself. There is no consultation appears, but that this man consulted with himself and his compting-house to take away the life of the king. As to any of those letters, there is nothing in them that looks that way. And as to what is contained in the letters received from France, they cannot affect him. All that can be inferred from them is, that he was privy to what was contained in those letters: and if that were high treason, yet it can only amount to misprision of treason in the prisoner. You who live in this great trading city, the most eminent for trade and commerce in the world, in which, I believe, you are very much concerned, know that a great part of the commerce is carried on by letters, and all or most of them are entered in books; you must have a due apprehension of the consequences of such a transaction as this is. To have a man living in his house in peace, under the protection of the king's laws, to have his books and papers taken from him, and those books and papers turned against him, to the destruction of him and his family.

Att. Gen. I desire you would forbear inveighing in this manner. This is not a proper manner of proceeding.

Sir *J. Jekyll.* You have had an account that an information was given to the secretary of state, of a treasonable correspondence carried on by this man, and here is an harangue complaining that his person and papers are seized. You know if there had been an information given to the meanest officer in the kingdom, he could not have justified himself, without doing the same thing.

L. C. Baron. You are not to arraign these proceedings.

Mr. *Hungerford.* I do not doubt but that noble lord had grounds for what he did, but what grounds he had doth not appear: and surely I have a right to observe, that all the evidence that appears against the prisoner, arises from those letters and books that were taken away from him.

Att. Gen. Pray, Mr. Hungerford, act within the bounds of your profession.

Mr. *Hungerford.* Mr. Attorney, I am to be corrected by the court, and not by you. I owe duty to my lords the judges, and I shall always pay it.

Just. *Tracy.* You ought not to reflect on that matter of seizing the papers.

Mr. *Hungerford.* I am not understood. I say all that is offered against him is from the papers found in his custody.

Just. *Pratt.* If that was all that you had said you ought not to have been interrupted; but I never knew in my life, but what was done in this case was ordinarily done in the like cases, and ought to be done; and you ought not to go on with invectives to the jury, complaining that his papers are seized, and then that those papers are turned against him. When a correspondence is carried on by letters ought they not to be seized? and if they appear to be treasonable, ought they not to be kept and made use of against him? We must not sit here to hear invectives against magistrates of the highest quality, for doing that, which if they had not done, they had failed in their duty.

Mr. *Hungerford,* I have not said any thing to impeach the legality of what was done. All I said, and do say, is, that the evidence is from the papers found in his own custody.

You have heard the letters read, and you observe, that great part of them is about dogs and horses, and a sum of 130*l.* 4*s.* and about a suit that was carrying on in the court of Chancery. As to the book, I shall touch no more upon it now, but I believe we shall be able to offer proof that there is not any part of it wrote by himself. How that will agree with the evidence already given, we must submit. We shall likewise give some account of some discourses that had been had with the man himself. And, I believe, I need not observe to gentlemen of your figure and circumstances, that the Mr. Harvey, who is represented by the king's counsel, to be the first promoter of, and carried on this treasonable correspondence, is at liberty even without a trial; and what the law

I thought it was a service to put a stop to that paper; and I did give some ease to that man that is named.

I am amazed how there can be such villainy as is in the brother. He came to the office two or three times with petitions. I never said any thing more, than that it was not in my power to do any thing; that he must deal ingenuously, tell all that he knew, and shew that he would speak all the truth; that that was the way to recommend him to the king's mercy; that I could not do any thing without it. And I believe the manner I treated Mr. Harvey will justify me, with all that know any thing of it, from the suspicion of such intentions against him. All that I did was in regard to the prisoner's wretched circumstances, and before Mr. Stanhope; and I never desired any thing of him, but to tell the truth, and the whole truth.

Prisoner. You told me I should be hanged, drawn, and quartered; and your lordship told me many a time, Damn you, you dog, now I have got Mr. Harvey in my clutches, and you will let him go from me. If there was no particular animosity against me, why should I be distinguished, for none were put in irons for treasonable practices, but me.

Lord *Townshend.* I would not take up your lordships' time, but only to say, that the warrant for irons, and to be kept without pen, ink, and paper, was after that letter had been delivered to me, the contents of which will sufficiently justify the precautions used in that warrant. I was sorry to see the ill use he made of the liberty that I had before given him, and I did use that warrant in that manner. Treasonable practices were then no more bailable than treason; and it is no new thing to fetter state prisoners under such an accusation.

Mr. *Ward.* I beg leave to ask your lordship one question, whether you apprehend that Curtis deserved any credit?

Lord *Townshend.* I can say no more, than that he made some discoveries, and there was no prosecution against him. I knew nothing of the man before, and I know nothing more of him now.

Mr. *Ward.* Did those informations appear to be true?

Lord *Townshend.* A great part did, by the confession of one of the persons he accused.

Mr. *Hungerford.* As to the two women that were examined just now, there was a remark made, that their testimony was extraordinary; I have five or six people to speak to their reputation, if it sticks with Mr. Attorney.

Att. Gen. Perhaps such as themselves; but however call them.

Then Mr. *Everall* was called.

Mr. *Hungerford.* What do you know of White or Meggison?

Everall. I know nothing of them.

Mr. *Ward.* Do you know where the prisoner's foreign letters used to be left?

Everall. His letters always came to my house.

Mr. *Ward.* Was he usually watchful for the coming in of his letters, as if there was any thing of concern in them?

Everall. No, they often used to lie some time before he called for them.

Mr. *Ward.* How long did they use to lie?

Everall. Sometimes three or four days.

Mr. *Ward.* Were they kept up close till he called for them?

Everall. No, they lay in a public room, so that any might see them.

Then Mrs. *Everall* was sworn.

Mr. *Hungerford.* What do you know of any letters directed for Mr. Francia? where were they left?

Everall. They used to be brought to our house, and they have lain two or three days together on a public table before they have been fetched away.

Mr. *Cowper.* How long ago was that?

Everall. About seven years ago.

Mr. *Cowper.* Have any been directed to your house of late?—*Everall.* No.

Mr. *Ward.* We shall now examine some witnesses to the copy-book, to prove that it is not of his hand-writing; and I do not doubt but that will have its weight.

L. C. Baron. He owned it to be his copy-book of his letters to his correspondents.

Mr. *Cowper.* We lay the stress upon this, that he said it was his copy-book of his letters to his correspondents abroad.

Mr. *Ward.* But you know Mr. Buckley laid a stress upon its being his hand-writing.

Then one *Rafter* was sworn.

Mr. *Hungerford.* Shew him the copy-book: look upon it, are you acquainted with the prisoner's hand-writing?—*Rafter.* Yes.

Mr. *Hungerford.* Is any part of that book his hand-writing?

Rafter. No, I take it to be his son's, George Francia's: The prisoner writes a smaller hand. I take no part of it to be his hand so far as I have gone.

Mr. *Hungerford.* I believe it may be of use for all the witnesses to look it over; we have four or five to this point; and if I am rightly instructed, there is not one word in that book wrote by the prisoner.

Just. *Pratt.* If it is not his writing, whose do you take it to be?

Rafter. I do not take it to be his.

Just. *Pratt.* Whose do you take it to be? Are you acquainted with his son's hand?

Rafter. I do not know whether it is his son's or not.

Just. *Pratt.* Are there any other persons that write for him?

Rafter. He had sometimes.

Att. Gen. Here is a letter of his own writing; pray let him look on that, and see whether that is his hand; do you believe that to be his writing?

Rafter. No, I do not think it is.

Att. Gen. Curtis has proved that he owned that letter.

Prisoner. What letter did I own?

Then *Simon Francia* was called again.

Mr. *Hungerford.* What do you say to that book?

S. Francia. There is not one syllable of his writing in this book; I have known his hand-writing about twenty years.

Then *Barwell* was sworn.

Mr. *Hungerford.* Are you acquainted with the prisoner's hand-writing? Is any of that book of his writing?

Barwell. None of it is his writing.

Mr. *Hungerford.* Do you know what condition of health he was in about the latter end of the year 1714, and 1715?

Barwell. He was sick.

Mr. *Hungerford.* For a year before he was taken, what condition was he in? Was he able to write letters?—*Barwell.* He was sick.

Mr. *Hungerford.* Did he use to write letters in that time?—*Barwell.* I do not know.

Att. Gen. Whose hand do you take it to be?

Barwell. How do I know that?

Att. Gen. Are you acquainted with his son's hand?—*Barwell.* No, not at all.

Then *Simon Francia* was called again.

Att. Gen. You have looked on the book; whose hand-writing do you take it to be?

S. Francia. I do not know.

Att. Gen. Do you know his son's hand-writing?

S. Francia. I never had any correspondence, or great acquaintance with him.

Att. Gen. Did you ever see him write?

S. Francia. I do not remember that I did.

Mr. *Ward.* We will trouble you with but one piece of evidence more; we will call Dr. Cade who attended him in his sickness. We have offered evidence, that no part of that book is his writing; we will now offer some proof that he was not capable of writing at that time.

Then Dr. *Cade* was sworn.

Mr. *Ward.* Pray, Doctor, did you attend the prisoner as his physician at any time?

Cade. My lord, I was sent for to him on the second day of November, 1714. I attended him till the 18th of the same month, and within that time I visited him nine times, I found him in a great deal of pain, and he was lame in his hand; some time after my coming he grew better.

Mr. *Ward.* Was he confined to his bed?

Cade. Sometimes he kept his bed, and sometimes he sat up.

Mr. *Ward.* You say he was in pain, and lame in his hand; which hand was it?

Cade. I do not remember which; nor do I know any thing of him, only at that time.

Sir *J. Jekyll.* Every one of the letters were wrote after that time.

Prisoner. What condition did you leave me in?—*Cade.* In a very bad condition.

Prisoner. Did you not hear of the condition I was in afterwards?

Cade. I do not remember that I heard any thing of you after that.

Mr. *Ward.* We will call a few witnesses to prove what circumstances he was in, and that he was well affected to the government.

Mr. *Hungerford.* By my instructions he appears to be a foreigner, and so disinterested in those unfortunate divisions that are amongst us: And accordingly there is nothing of Whig or Tory in his letters.

Att. Gen. Do not you remember when he came to Newgate he wrote he liked his company, for he found them all Tories?

Mr. *Hungerford.* We will shew you that he was zealous for the good of the kingdom, and was against all that was disadvantageous to trade in the late treaty of peace. That he never went into any public places, except to the Grecian coffee-house, which is a place sure not tainted with sedition.

Then Mr. *Everall* was called again.

Mr. *Ward.* How long have you known the prisoner?—*Everall.* Several years.

Mr. *Ward.* Has he been peaceable, and easy in his conversation, with respect to the government?

Everall. I remember at the proclaiming the peace he said, he thought the nation was ruined, for he thought it a scandalous peace.

Att. Gen. That is much; for you make him a Frenchman, sure he might have approved it.

Mr. *Hungerford.* This is not what I have in my brief, but perhaps he may recommend himself to your esteem by it: he doth not to mine.

My lord, I will take up your time only with this remark: the great foundation of this evidence is the confession made by the man himself. Without the key made by him, this had been applicable to nobody. I remember sir Joseph Jekyll was pleased to say, he would not excite the passions of the jury, but rather appeal to their judgments, so will I. Great part of this correspondence relates to Mr. Harvey, and one would have thought they had something extraordinary to have charged on him, considering the length of his restraint; but I need not observe to the jury that he is at large. He was under restraint, nothing could be imputed to him, and he is discharged.

L. C. Baron. Francia, have you any thing more to say?

Prisoner. As for my nativity, I have more witnesses. I have more witnesses as to my character. I have more witnesses to prove that I was a quiet man, and never disaffected to the government.

Then *John Slater* was sworn.

Mr. *Hungerford.* What do you know of the prisoner's behaviour?

Slater. I have known him about four or five

years. There being a commission of bankruptcy against him, I was recommended to assist him in that commission. I did give him the best assistance I could, and I several times met him, sometimes at the Grecian coffee-house, and sometimes at my own house. I took him for a Frenchman, he used very much to espouse the interest of the king of France, which I used to chide him for. As for parties here, I had some discourse with him, and he used to think we were a strange people to fall out among ourselves.

Then *Thomas Richardson* was sworn.

Mr. *Hungerford.* What do you know of the prisoner and his behaviour?*

Richardson. I have known him five or six years, and I believe I have taken five or six pounds of his money. When he was sick he took a liking to me, and would not be quiet unless I came often to see him, and I used often to sit with him in an evening and bear him company, and it was a great surprize to me when I heard he was taken up, for he used often to drink a health to king George, and hoped he should get up to see him, and hoped this would be a quiet nation again. He was then so weak that he could not stir hand or foot. But he used to call me Vulcan, and bid me drink king George's health.

Mr. *Hungerford.* How long is it since he was so weak that he could not stir hand or foot?

Richardson. About a year and five or six months. And when he got abroad I then was forced to follow him for what he owed me, and I have gone after him several times to the Grecian coffee-house.

L. C. Baron. Have you any thing more to say?—*Prisoner.* No.

Sol. Gen. My lord, I must beg leave (by way of reply to what has been offered on behalf of the prisoner) to say, that this is a cause of very great concern to the king, to the royal family, and to the whole kingdom in general; and I may with justice affirm, that this day one of these two points must be determined; either that the prisoner at the bar is guilty of high treason, or that no man can, as the law now stands, be convicted of holding a foreign traitorous correspondence, if this evidence be not sufficient; for here has been the strongest evidence given of such a correspondence, as I believe ever was, or perhaps ever can be given, according to the nature of the thing.

The gentlemen of the jury will consider the nature of the treason, as it is laid in the indictment; it is for compassing and imagining the death of the king; now, that rests in the imagination, and is complete in the mind; but there must be some open or public act that must appear to you in proof, to convince you that the prisoner had that imagination. There are three overt-acts laid in this indictment, and we have produced evidence sufficient for the proof of two of them, though if any one of them be proved it is enough. The first is, conspiring, consenting, and agreeing to raise an insurrection and rebellion within this kingdom, in favour of the Pretender; and for conspiring, consenting, and agreeing to solicit and procure from France, arms, ammunition, men and money, to aid and assist in such rebellion; and the last is for composing and writing several treasonable letters, declaring his intention and resolution to levy that war, and to raise that rebellion.

The evidence that has been given is of two sorts; it consists first, of letters wrote by the prisoner himself to his correspondents in France; and secondly, of letters wrote to him by such correspondents, signifying the receipt of letters wrote by the prisoner to him, touching this traitorous design. For proof of the letters wrote by the prisoner, we have produced his copy-book of letters, wherein they are entered, proved to be part his own hand-writing, and the rest his son's; and indeed it is a surprising thing, that that copy-book should remain, which indeed is so rare a way to perpetuate the testimony of treason, as I believe the like evidence is never to be expected again; and it is absurd to expect, when a traitor writes in a foreign country; that he should be able to produce the original letters. The proof of this copy-book to be his is beyond doubt; it is proved by his own confession, before three witnesses, and in very strong terms, 'This,' says he, 'is my copy-book of my letters to my 'correspondents abroad.' Is it possible that stronger evidence can be given? Nay, he goes farther, as a noble lord informed you; for when he was examining the prisoner, and the prisoner pretended that he was only a conveyer of letters, but did not write himself; says he, 'As to what I have wrote, I appeal to my 'own copy-book of letters.' They have brought indeed some witnesses to say, that they believe that the copy-book is not of his hand-writing, though they do not tell you whose hand it is. But that is not material, nor of any weight; for copies of letters are sometimes entered by the parties themselves, and sometimes by their servants, or others whom they appoint, and that is the same thing; but to answer that fully, the prisoner has confessed that part of this copy-book was of his own hand-writing, and the rest of his son's.

As to the other letters from D'Aulmay, his French correspondent, to him, which are many in number, we have given the best proof the thing is capable of; we have produced the very original letters themselves, directed to him, with the post-mark from France, found all in his custody, and confessed to be his letters which he received from France, before three witnesses. This shews evidently that there was a traitorous correspondence, and is a plain

* See Mr. Erskine's Observations on this examination in the case of Hardy, A. D. 1794; and the Note to Dammaree's case, in the present Volume, p. 522.

evidence, that the prisoner sent those letters mentioned to be received in D'Aulmay's letters to him, to which these were answers, and the letters exactly tally as to dates, circumstances and subject. If there had been but one of those letters sent to the prisoner, containing treasonable matter, it would have been misprision of treason, if he had not discovered it; but his going on with the same treasonable correspondence for months together, and in so many letters, in every one of which he charges the prisoner with writing high treason, and he preserving all those letters, concealing and keeping them close; this is a strong evidence of his approbation and assent to that treason and traiterous correspondence. And so it is in the common case, if a man meet accidentally, not knowing of the design, and light into the company of traitors, and hear their discourse and say nothing, if he do not discover it, he is guilty of misprision of treason only, as a bare concealment; but if he comes a second time into their company, and meet them again and hear their consultations, or the same treason is proposed and talked of, and he conceals it, he is guilty of high treason; because it shews a liking and an approbation of their design, and so it was resolved in sir Everard Digby's case.* So here, all these letters that came from D'Aulmay, and were kept up close by the prisoner, containing treasonable matter, shew his approbation of the treason, and are a strong evidence, that he sent those letters to his correspondent D'Aulmay, to which these are answers. It has been said, that, admitting these letters were sent by D'Aulmay to the prisoner, yet he is not answerable for what others write: that, surely, is a great mistake; for if what he writes be treason, it is his duty to disclose it; and if he do not, but continue to receive such letters, this is a clear proof of his traitorous correspondence, and by that he makes the treason his own. They object farther, that the prisoner was only a conveyer of Mr. Harvey's and the duke D'Aumont's letters; but that this is otherwise, appears from the letters themselves, for most of them relate to himself, and are meant of himself, and of a correspondence with him; for it appears from his own confession in his examination proved by three witnesses, that this French correspondence held from a little before the late queen's death, till a few days before his examination; which shews that the correspondence was his own, and carried on by himself.

In the next place we come to consider the exposition and meaning of these letters, whether the subject matter be treason or not; one of the counsel for the prisoner said, there was nothing in them but about dogs and horses; but that is a mistake, for those were Mr. Harvey's letters, which talked sometimes of dogs and horses; but give me leave to say, there seems even in them to be a good deal of treason, intermixt with the discourse of dogs and horses. Let us examine some of his own letters, and see whether the subject matter be not treasonable. It is not to be expected that men will in these cases speak out plain; no, the treason is always to be dressed up in a cant, and many of these cases have appeared in this place. In my lord Preston's case* the overt-act charged there, was sending treasonable letters to France, to give the prince of that nation an account of our strength and forces here; those letters run all in a sort of cant, and it was in that case pretended, that the meaning was uncertain, and that no body knew what to make of some of the expressions in them; but notwithstanding that, both judges and jury took upon them to understand them, and he was found guilty of high-treason.

In the letter of the 29th of February, D'Aulmay writes to the prisoner, and desires to know some news, because the interest of his wife and family, which, says he, is Irish, is concerned in it, his wife being a Butler, and of kin to the duke of Ormond. Francia, in answer to that letter writes him word, as for news, that he heard there was a marriage in good forwardness between the prince in Lorrain and one of the arch-duchesses. Let me know, says he, what there is in it, since it is essential to the interest of your wife, that is to say, that Ireland as well as England was concerned in the Pretender's marriage; for every one knows who is meant by the prince in Lorrain. Now see what answer D'Aulmay sends back; he gives his opinion freely, and thinks that this intended marriage of the chevalier de St. George (which by the way explains who the prince in Lorrain was) with the arch-duchess, would not be a sure way to bring his affairs to an happy issue. What was to be done then? Why, says he, a party-war would be much more to his advantage. Is not this easily to be understood? Is not this party-war, a civil-war, an insurrection, a rebellion? D'Aulmay then giving his opinion, that a rebellion was the most eligible way; what is the prisoner's answer? Why he closes with the advice, but says, that persons of fifty or sixty thousand crowns a year cannot with prudence run the hazard of losing such estates, unless more encouragement be given them: What is this but soliciting aid and encouragement from France, for an enterprize in which men of estates must run the risk of losing them? It is said persons in the plural number, not one single person, though the prisoner's counsel endeavoured to put such a colour upon it; but it is plain in a party-war many must be concerned.

In his letter of the 28th of March, after he had expressed a great deal of uneasiness and impatience, the negligence and delay of this assistance from France not usual in that nation, after he had wrote again and again, and wondered the delays were so great; at last, says he, we are now to expect every thing from your

* See it cited by Holt, vol. 13, p. 906, and by Mr. East's Pleas of the Crown, c. 2, s. 7.

* See it, vol. 12, p. 645.

side the water. What can be the meaning of this, but that the designed rebellion here was to be encouraged from France? And this surely is as much as can be expected in an affair of treason, unless people were to write out plain, which is never to be expected, unless from fools and ideots, who cannot commit treason. All D'Aulmay's letters to the prisoner tally with those of the prisoner's own, and pursue the same design, though under a cant which runs through most of them, as was in the lord Preston's case. In that case there was the cant of a law-suit, as in this; but my lord chief justice Holt, and my lord chief justice Pollexfen said, that would not acquit his lordship of treason, if the jury understood them in that sense as every body else would. And why words and letters are not to be understood in court, as every body understands them out of court, is a hard matter to be explained.

It was indeed insisted by the counsel for the prisoner, that there really was a cause recommended to the prisoner's care: that is very true; but then the distinction between this private cause, and the public cause of the Pretender, appears from many of D'Aulmay's letters; sometimes he calls it our cause, sometimes the cause of our common friend, and in a very remarkable letter of D'Aulmay's dated from Paris, 7 August, 1715, he says, the prisoner was in the right to inveigh against that indolence he reproached them with; but be persuaded, says he, it is only so in appearance. I even hope, that by this time you have convincing proofs of it, and that we make suitable returns to the good disposition on your side, and that at last, God blessing the good cause of our friend, will let him gain his suit. To explain this letter, the time is very material, for on the 20th of July before his majesty informed his parliament, that he had undoubted intelligence of the Pretender's design to invade these kingdoms from abroad. And in other letters he distinguishes between the private cause, and the cause of the Pretender, and calls it my cause. And in a letter of the 14th of September, 1715, We know already, says he, what you tell us about the cause of our friend, which will soon end to his satisfaction, or all appearances will deceive us; and then says, as to my own cause, I cannot help telling you, that my fate is very unhappy to have to do with so dishonest a man; If treason be not meant by those letters, what is? Let the prisoner tell us the meaning of them. Neither he, nor his counsel, have offered at any other interpretation, nor have offered to explain but one single letter in the whole packet; and that has been observed was a poor interpretation, and contrary to the very grammar and sense of the letter. But what puts this matter beyond doubt, if there could be any, about the meaning of these letters, is, that he himself tells you in his examination, in express and positive terms, that the subject matter of the letters that were to be communicated to Mr. Harvey, which are the letters now produced in evidence, was the intention of the Pretender to invade his majesty's dominions; and when he himself has allowed this, who is to gainsay it? Can you have a better witness than himself, to the subject of his own letters, and to explain his own meaning?

There have been some reflections offered which by no means ought to have been, and I think were very improper on this occasion; and it is our duty to take notice of them when they are offered. It was said, by way of reflection, that first of all, the prisoner's books and papers were seized, and then they were turned upon him, and made use of against him, as if this was illegal, unusual, and new; when every body knows in those cases, there can be no other evidence; and is the same that has been done in all ages past, and must be done in all ages to come. I am sure they have no reason to charge the government with inclemency; there has been shewn, even in this very case, as much clemency and tenderness as was possible. When the noble lord, my lord Townshend, had the first information of treasonable practices against the prisoner, he had been justified, if he had immediately sent his warrant and sent him to Newgate for high-treason; but instead of that, he was cautious, and was willing to be further informed before he committed him; and therefore he sends to the post-office and orders his letters to be stopped, in which he found the treasonable correspondence confirmed; and then he was taken into the custody of a messenger only, in order to be examined. His lordship thereupon gave him all the opportunities he could desire, of throwing himself at his majesty's feet; but he grossly prevaricated with his lordship, as appears by that letter wrote to his wife; wherein he takes notice, that in Newgate they were all Tories, and the majority for the government, *i. e.* sent thither upon that account: "You know, says he, why I am here, which cannot be a dishonour to me, be then at ease; I have not said any thing against Mr. Harvey, nor nothing can be done to him; he can only be suspected to be the Pretender's friend."

And now give me leave to take notice, that in this letter he gives a further explanation of this business; for he says, "According to their information, *i. e.* the Tories, though every thing should fail, my lord Townshend could do nothing, for affairs will be at an end in less than a fortnight." Now the time is very material, every one knows that the rebellion was just then breaking out; it began in Scotland in September, and in England in October following. They have called some witnesses to the prisoner's reputation, but they have not proved any thing material on that head, nor given a tolerable account of him. But if they had, it would in this case be of little or no weight; when a thing is doubtful, reputation may sway a little, but in cases where the evidence is so full and plain as in this case, it can have no signification or weight. It was observed by us, that when the treasonable corre-

spondence began to be more plain and full, then the prisoner desisted from entering his letters in his copy-book; in answer to which, it was urged by the prisoner's counsel, that it was improbable it should be so, for that the correspondence was entirely interrupted for several months together, because, as they insisted in one of D'Aulmay's letters, dated 17th September, he complains he had not heard from the prisoner in three months; but that is grounded on a mistake, for the person that uses that expression is not D'Aulmay, but another person, and it is wrote in French in a postscript under D'Aulmay's letter; for in the beginning of the letter itself, D'Aulmay expressly says, he had received the prisoner's letter of the ninth instant, which shews the correspondence continued, but was too gross to enter such letters in his copy-book, or to write under the same name; for now, he says, when he has any thing material, he would write in a strange hand, and would sign it by the name of Jacques Chrêtien, and that Mr. Harvey might write under the same name too; but none of these letters appear.

Thus I hope I have answered every thing that has been materially objected by the prisoner's counsel, and if you, gentlemen of the jury, do believe that the prisoner at the bar wrote these letters, the copies whereof have been produced to you, and that those letters produced from his correspondent D'Aulmay, were received by the prisoner, and that he wrote the letters therein mentioned, and that he has therein carried on a traitorous correspondence, you will acquit yourselves to your king and country, and find him guilty of the high-treason charged upon him.

Mr. *Cowper*. My lord, it may be proper on this occasion, Mr. Solicitor having repeated the particular parts of the evidence, to take notice of some things that have appeared in general in the course of this trial: we think it of importance to the public, that this traitorous correspondence should appear in a proper light, that the deluded populace may be no longer to seek, who were the persons that incited and fomented the late unnatural rebellion.

The gentlemen of the jury will observe, that our evidence begins with a secret information which was given to a noble lord who was then secretary of state, of a traitorous correspondence carried on by the prisoner and his accomplices: that information was not immediately or hastily relied upon, but orders were given that all letters, directed to Francia the prisoner, should be intercepted at the post-office; accordingly you have heard, that several foreign letters from France, directed to the prisoner, were stopped, and sent to the secretary's office; those letters fully disclosing the treason, it was thought time to issue a warrant, and send a messenger to seize the prisoner and his papers; and it is to us wonderful, that one of the counsel for the prisoner should undertake to censure that proceeding, the neglect of which must have been censured, if it had not been done: after an information received of so vile and dangerous a conspiracy, confirmed and made evident by letters intercepted, was it possible for one, entrusted in so high a station under his majesty, to do less than to cause the person and papers of the prisoner to be secured?

You have heard, gentlemen of the jury, that from the time of seizing the letters and copy-book of letters, in the lodging and actual custody of the prisoner, there is a regular and certain proof, as to the identity of the book and papers produced at this time, and given in evidence; they were carried by the messengers just as they were taken, to Mr. Walpole, who delivered them to Mr. Buckley; and the witnesses all speak likewise to the book and papers themselves; so that there remains no manner of dispute concerning them.

Amongst these papers, gentlemen, you will observe, there is one letter that relates to Mr. Harvey, which is now produced because it is evidence against the prisoner Francia: he, it seems, was to manage Mr. Harvey's correspondence, and did so for a considerable time, but at last curiosity prevailed; and it is very remarkable, by what accident that original treasonable letter happens to appear now in this place: it seems the prisoner, in breach of the trust and confidence which was reposed in him, and to gratify his curiosity, opened the letter, and finding he could not seal it up, and put it together again in that manner, but that it might be suspected he had opened it; for that reason he himself kept the very original letter under Mr. Harvey's own hand. When that letter comes to be read, it appears to be mysterious, as to the figures and numbers made use of, instead of the names of persons, but the prisoner's examination explains it, which shews he was master of the key, and of the secret.

This discovery was attended with circumstances that will have their weight, in a cause of this nature: when this letter found upon the prisoner is produced to the person that wrote it, before a committee of the lords of the council, you have heard that he was in the utmost disorder, as indeed well he might, that he expressed himself ready to disclose all that he knew; for what person being in his condition, and seeing one of his own letters, which he believed safe in the hands of his correspondents abroad, would not have believed the government masters of the rest; I dare say Francia's impertinent curiosity was then unthought of and unsuspected. I am sorry, gentlemen, to mention a particular accident, which, however, serves to shew that the correspondence was of a dangerous nature, otherwise what account can be given, that that gentleman should, in about twelve hours after, make a desperate attempt upon himself?

Mr. *Hungerford*. My lord, I apprehend that nothing of this matter ought to be mentioned

here; whatever Mr. Harvey was liable to, he is now at liberty.

Mr. *Cowper.* I say, my lord, it had that consequence, and if it had not been a discovery of the utmost importance, if it had not been thought very dangerous in its consequence to himself, that attempt upon himself had never been made: but so it was, and it is so far material, as it was occasioned by part of that correspondence which the prisoner was employed to transmit to the conspirators in France.

You have heard, gentlemen, that Francia, when he was first examined, capitulated for himself; that he promised to make a full confession, and accordingly gave in a first, and second information, which have been read to you; and I dare say, when he signed those examinations, he really intended to save himself by a discovery of his treason; but when he had taken counsel with his party and fellow-prisoners in Newgate, you find, by his letter to his wife, he changed his mind, and the expression is to this effect, "He hopes he had said nothing that could hurt either himself or Mr. Harvey, and that he laughed at any thing the government could do to himself."

Your lordship has heard how artificially and maliciously it has been insinuated, that the noble lord, the secretary of state, gave some hopes of intercession to be made in favour of the prisoner; I firmly believe, no man living that knows that lord, but thinks he would have been better than his word, if the prisoner had honestly deserved it. Whatever was said upon that occasion, proceeded from the prisoner's assurances, that he would make a full confession, that was the ground and condition upon which the prisoner was told he should be recommended to mercy. But let the world judge, whether that noble lord could justify it to the king, his country, or to himself, to interpose in his favour, when he came to discover, by a letter under the prisoner's own hand, that he was resolved to conceal all that he knew: surely, the condition being broke by the criminal himself, it became the duty of the noble lord not to intercede for an obstinate offender; one, that was determined to abide every extremity, rather than do his duty, by disclosing those treasons that were latent in his breast; so that we owe the discovery which is made by the examinations to the same Providence that has brought to light the rest of the evidence in a strange and wonderful manner.

After so much time has been spent, it would be tedious to observe the particular passages of the letters which have been given in evidence; only this I would observe, that when the rebellion was not so near at hand, there seems to be some little caution used in penning the letters which have been read out of the copy-book; but as the time grew near, the correspondence also grew more warm and open, as may be perceived by the letters from abroad; which is the reason, gentlemen, you find him discontinue entering his own letters in his copy-book. It has been said by his counsel, can it be imagined that a man would copy and enter letters of a criminal nature? But, gentlemen, the question is, whether he has done it? And you hear it proved by three witnesses, that he owned it to be his own copy-book of letters to his correspondents abroad; so that there can remain no doubt, but that every letter in that book is a copy of the original wrote by the prisoner: whoever will observe the time when he discontinues entering his letters as formerly, which was just as the rebellion was breaking out, will think it a strong evidence, if evidence were wanting, that the letters entered, contained a criminal and traitorous correspondence.

Had the correspondence been innocent, the same method would have been continued; for the rebellion had nothing to do with the sham law-suit. But as the rebellion grew nigh, it became necessary to be more express and plain, as appears by all the letters to Francia from abroad; which is the true reason he discontinued entering his own letters. Can any body that can hear or read, doubt, but that the prisoner continued to write to his friend Payen? I think there is not one letter directed to the prisoner that does not in the first line of it acknowledge the receipt of the prisoner's, "yours of such and such a date I have received;" and some of them acknowledge the receipt of two letters from the prisoner at the same time, which shews his diligence, and proves, that he writ oftener to his correspondent than his correspondent to him. You see, gentlemen, the letters from D'Aulmay, alias Payen, to the prisoner make it manifest he went on to the last in the same traitorous correspondence; but it cannot be expected his original letters should be produced. D'Aulmay's letters plainly intimate the tenour of the prisoner's: I will trouble you but with an instance or two amongst many that might be observed.

Of this kind are all those letters which dissuaded the prisoner from being impatient; that give him assurance they are not dilatory; that promise him every thing will answer his expectation. All these, and many other expressions of the like kind, manifesting that he was soliciting aid from France, and that he did what in him lay to incite, promote, and encourage an invasion from abroad, and the rebellion at home.

This, gentlemen, is the nature of the evidence that has been laid before you: the discovery was accidental, the tracing of it is strange and wonderful. Deep and secret are the counsels of traitors; and yet we see, let them be never so cautious, whatever method they may take to disguise their treason, whatever subtil inventions may be used to carry on their conspiracy, yet the same Providence that has placed his sacred majesty upon the throne of his ancestors, will continue to guard and protect him, and to baffle the devices of his enemies. Upon the whole matter, we think we

have fully proved the treason and the overt act laid in the indictment. We think it may reasonably be concluded from the evidence, that the prisoner has conspired, consulted and agreed to raise and levy war within this kingdom, to depose and murder the king; that he has written to and received from his correspondents abroad many letters to procure foreign assistance for that purpose; and the Court will inform you, gentlemen, that this is treason in the prisoner at the bar.

L. C. Baron. Gentlemen of the Jury, Francis Francia stands indicted of high treason, for compassing and imagining the king's death; contriving to depose him from the throne, and to advance the Pretender to the crown. And there are laid in the indictment several overt acts; one is, that he consulted and agreed to raise an insurrection and rebellion against the king: and that for that purpose he wrote letters to divers foreigners, to solicit and procure arms, men and money, and to cause an invasion; and caused those letters to be sent to divers foreigners in France.

This is the substance of the indictment; and to prove this, it has been shewn you how he was taken and seized. And Mr. Smith tells you, it was upon the 19th day of September, 1715, that he had a warrant to seize him; that he went with another messenger, since deceased, whose name was Wilcox, and found him and a woman in bed. The prisoner in a little time got up. He tells you there was a closet in the room, the door whereof he caused to be opened, and in it, upon a shelf, found a parcel of letters lying open in folio, wrote in French, and a book, that has been produced, lying upon the desk. He put up the letters and the book together; when he had so done, says the prisoner, "What do you take that book for? That is my copy-book of my letters to my correspondents, and there is nothing material in that." The messenger took notice of a sort of writing at the end of it, that he knew it by again, and the prisoner said, "That was his son's writing." It has been deduced to you, that the book and the letters that have been produced to you, are the same book and letters that were seized in the prisoner's house, and carried to my lord Townshend's office.

Mr. Walpole tells you on what day the warrant was granted, and that the next day the book and papers were delivered to him by the messenger; that he looked over them with Mr. Buckley, and then he carried them to my lord Townshend; and that the prisoner owned the letters upon his examination before my lord, and said, "This is my book of my letters to my correspondents: some of them were entered by me, and the rest of them by my son." This is proved to be the same book; and upon perusal of the letters, Mr. Walpole proves them to be the same that were brought to him by the messenger.

Mr. Buckley says, that when these letters were brought to the office, he read several of them; and that when Mr. Walpole went to Holland, they were left with him, and he copied several passages out of them. Mr. Buckley was present at the prisoner's examination, but cannot say any thing as to the book's being shewn to him, because he was busy in taking the examination; but says, that Francia, upon his examination, would not be sworn upon a New Testament; but took a book out of his pocket, and was sworn upon that, that his examination was true. He subscribed his name to it, and it was read over to him. It was objected, that he was refused the liberty of reading it: but there was no such thing; he might have read it, and it was read to him, and he was never refused to read it.

My lord Townshend informs you, that he having received an information, that a correspondence was carried on between the duke D'Aumont, the late duke of Ormond, and Mr. Harvey, and that letters past between them by means of the prisoner, there were orders sent to the post-office, to stop all letters directed to Francia; that the prisoner being examined before my lord, owned all these letters. And says he, "As to my own letters, I appeal to my book which will shew them," these are so many evidences that he owned this book to be the book of his letters. "What others write to me," says he, "cannot affect me; but as for my own letters I appeal to my book." My lord says, there seemed to be a disposition in him to tell all he knew, and he offered to explain the letters there produced; that at the next time Mr. Harvey's letter was produced, and he explained the figures in that letter; and my lord Townshend then took him to be sincere, but he found afterwards, that he had not discovered all he knew. These letters were laid upon the table during the time of the examination, and were taken back again. The prisoner asked several questions about money being given him, and more offered to him, by my lord Townshend. My lord gave an account of that, and says, that the prisoner pretended to be in a miserable condition, his wife starving, and he begged hard for something, pretending to be miserably poor; and as he was going away, as mere alms, my lord gave him three, or four, or five guineas, not as any encouragement to him to swear any thing, but as mere alms, because he begged so hard, and pretended to be in so miserable a condition. Then he desired to know, whether it was not promised him, that his examination should not be produced against him. He was told, that if he was candid, there should be no advantage taken against him, and that my lord would intercede on his behalf*; and if he had been so, no doubt, my lord would have done what he could to incline the king to be favourable to him; but after this, my lord found he knew a great deal more than he would discover. His wife came indeed to my lord, and pretended she could

* As to this, see in Leach Mrs. Rudd's Case. See, too, Dr. Dodd's Case, in the same book.

prevail upon him to discover, if she might be admitted to him; but after this, when he was in Newgate, a letter was found directed to his wife, in which he said, he met with good company in Newgate, and hoped he had said nothing against Mr. Harvey which would prejudice him; and upon this, my lord Townshend did not think him so sincere as he pretended to be at first. Mr. Buckley proves that letter to be of his hand-writing. In it he desires his wife to make herself easy, "They were all Tories that were there; he had good company, and the business will be at an end in a fortnight." What business could he mean? Nothing but that about which the correspondence was, and "God will assist us; I know nothing against Mr. Harvey, he is only suspected to be for the affair, he was well known to be so before; and if all were here that are so, he believed three parts of the nation would be there." So that he had a good opinion of the cause, and that it would be over in a fortnight.

This examination was also proved by Mr. Stanhope, who says, that the letter of Mr. Harvey annexed to it, was produced at council to Mr. Harvey; that he was in the utmost confusion, changed countenance, desired to withdraw, and to have liberty to speak to a certain lord: My lord Townshend, and Mr. Stanhope, both thought him in a good disposition to discover, but that very night he stabbed himself. As to the examination, he pretended he was not suffered to read it; but Mr. Stanhope says, that every thing of consideration was repeated more than once or twice; and after the first night's examination, he represented himself to be in a miserable condition, and thereupon my lord Townshend did give him some money, what it was he knows not; and this was after he had signed his examination, and shewed no reluctancy to it; and says, that he would not have been denied to have read it, if he had desired it. This examination being thus proved, it appears to have been taken as fairly and carefully in all respects, and with as much kindness to the prisoner as could be: things were gone over and over again. It has been read, and there are some things in it that explain this correspondence, and tell you how it was begun and carried on.

It was begun by means of a law-suit that was recommended to him to manage here, and that brought on the correspondence between him and the abbot Butler: This began a little before the queen's death, and it continued till within a few days of the prisoner's examination. During that correspondence he received several letters from the abbot, directed to Mr. Harvey, and several were conveyed to the abbot from Mr. Harvey, which were sometimes brought by Mr. Harvey himself, and sometimes sent by other hands. The prisoner also explains the initial letters and numbers in Mr. Harvey's letter, and then tells you, that he believes the subject matter of the letters wrote to Mr. Harvey, by Payen alias D'Aulnay, was the design of the Pretender to invade these kingdoms; this he could not know, unless he had been privy to the design. If a man is privy to a treasonable design, and contributes to carry it on, it is not then barely a misprision: If he comes to the knowledge of treason, without being otherwise concerned in it, and does not discover it to a magistrate, this is misprision of treason; but if he assents to the treason, or acts in carrying it on, it is high-treason.

In the next examination it is, that he shews what the marks in Mr. Harvey's letter signify: That 22 is the duke D'Aumont, 6 the French king, 17 is the word Tory, and believes that by 8 is to be understood the Pretender, and by 9 is to be understood his majesty. There are some marks that he does not know, but his knowing thus far the signification of these marks, shews that he was privy to the design.

Mr. Harvey's letter is annexed to this examination, and that has been read to you; there are some things remarkable in that letter, though a great part of it seems to be about some money that he wanted to be paid him; yet at the end he says, Press 22 to think of his friends; it will be well for 6; all things look well for 8, and in my heart, I think better than ever; 9, says he, every day loses himself, and for the 24000 that makes for 8 and 6, that is, for the Pretender and the French king. He says, that opening the cover the letter stuck to the seal, and that was the reason that he kept it by him, and did not send it forward. If this man had not been for carrying on the design, it had been his duty to have carried this letter to the secretary of state, he ought to have discovered it to a magistrate; but instead of that, he owns, that he has since written other letters that have been read to you.

At the beginning of the correspondence D'Aulmay desires to have some news, and Francia tells him, there was a discourse of a marriage in forwardness between the prince at Lorrain and the arch-duchess. "Let me know, says he, what is in it, for it is for the interest of your wife," for he had married a wife whose name was Butler. D'Aulmay writes word again, "as for the marriage of the C——t St. G——e;" but it is in answer to the former letter, and it is known that he was called by the name of the Chevalier St. George; so that it must be the same person. He says, "there had been some talk of that marriage, but no mention had been made of it lately, I am of opinion, says he, that it will not be a sure way to bring his affairs to a happy issue; a party-war would be of more advantage:" Francia writes again to D'Aulmay, and complains, that some letters had not been answered, though entirely for the affair. And what that affair is, must be left to you to judge. Besides, says he, I must tell you, that persons of 50 or 60 thousand crowns a year will not run the hazard of losing such estates, unless more encouragement is given them; you will be understood if you mention it to that lord. And I must add,

that the misfortune of a certain person is more owing to your delays on the other side the water, than to the party that is against him. They would have you think, that by persons of 50 or 60 thousand crowns a year, was meant a person in France, that had suffered by being concerned in the revenues; but it is plain, it is meant of persons here, that would not hazard their estates: And he adds, You will be understood if you mention this to duke D'Aumont.

There are other letters from the prisoner; in one he tells D'Aulmay, he would advise them to satisfy Mr. Harvey, I am persuaded to deal with him as has been done is no good policy; and if ever I have the honour to talk face to face with you, I will shew you clearly, how unhappily, through negligences, very important affairs have miscarried; this must be the affair of the Pretender, and not of the law-suit: The affair that concerned Mr. Harvey, for Mr. Harvey had nothing to do with the law-suit, but by his letter shews himself to be concerned for what makes for 8 and 6, that is for the Pretender and French king.

There is another letter from Francia, wherein he writes, "What you tell me at the end of your letter, of your having spoken in the manner I desired you, is sufficient, and consequently we are now to expect every thing from your side of the water, that is to say, explications," &c. I must leave it to you to consider what he meant by that.

In another letter he says, "I am ordered to tell you on the part of Mr. Harvey, that you will do him a pleasure in desiring the duke D'Aumont, in his name, to send hither some persons to fetch the horses and dogs he has had so long, or else to send orders to somebody to take them: Affairs are here in such a situation, that great precautions must be used to avoid giving umbrage to those who are in power. When I have any thing particular to write to you, I will do it by a strange hand, and will sign Jacques Chrêtien. Take notice of this, and provided you let me know you received this letter, without its having been opened, I shall be easy." There then began to be more difficulty, and therefore the correspondence must be carried on in that name, and in a strange hand.

In another letter he writes, "Mr. Harvey gives his service to you, and bid me tell you, when any thing new offers, if he cannot write himself, he will get J. C. to write for him." That must be Jacques Chrêtien.

Then there are other letters from D'Aulmay to Francia, which were found in the prisoner's custody; and several of them import his having received letters from Francia. In one of them D'Aulmay says, "You are in the right to inveigh against the indolence you reproach us with; but be persuaded, it is only so in appearance. I even hope, that by this time you have convincing proofs of it, and that suitable returns are made to the good dispositions of our side." This grew near the time of the rebellion. This letter was dated the 7th of August, and the rebellion broke out in October. He goes on, "and that at last, God blessing the just cause of our friend, will let him gain his suit; at least, assistance and powerful solicitations shall not be wanting."

There are other letters which shew he knew the design, and was privy to it; "Our friend's cause will soon be ready, God willing, to be tried." That could not be the law-suit depending on this side the water; for that letter was wrote from France; and he says, "All preparations are making for it. The friend who is related to my wife," that is, the duke of Ormond, "has read your two letters, and is mightily pleased with them." Which implies, that he had wrote letters, though they are not entered in the copy-book.

Then he writes upon the 24th of August, under the name of Payen; "I am very much astonished I did not hear from you by the post which arrived yesterday. Our friend was at my house expecting it. We both of us desire you not to let one post go without writing to us, and letting us know all that passes relating to the cause of our common friend." That cannot be the cause of Butler's or D'Aulmay's friend that was depending here. There are several other letters which have been read to you, which mention both those causes, and shew that he made a distinction between them.

On the 14th of September, says D'Aulmay, "The contents of your last without a date were very agreeable to me, as well as to all our friends, who give you thanks for it, and have ordered me to tell you so, and to desire you to continue. We know already part of what you tell us about the cause of our friend, which will soon end (please God) to his satisfaction, or all appearances would deceive us. As to my own cause, I cannot help telling you, that my fate is very unhappy to have to do with so dishonest a man."

I think this is the substance of most of the letters that have been read to you, which relate to his correspondence, in endeavouring to procure the Pretender to make an invasion here.

Upon these letters it has been observed, that the cause of the Pretender is one, and the cause of the law-suit is another; but in all these letters there is plain mention made of the Pretender; advising how to bring it on, and giving intelligence about it. And these letters being in the prisoner's custody, and written to him, and having such treason in them as is mentioned; and he keeping these letters by him, is a great evidence that he assented to the transaction, and to the endeavouring to bring the Pretender over, and to contrive, as well as he could, to carry on the affair. If he had received but one letter, and did not design to promote the cause, he should have carried it to the secretary of state, and then he had done his duty. But to receive so many letters,* and to

* At O. B. Sept. sess. 1784, colonel Gordon was tried for the murder of lieutenant colonel Thomas in a duel. The letter from col. Gordon, containing the challenge, was carried by his

keep them so long, is an evidence that he assented to the matter, and that he did write such letters as are mentioned to be received from him.

On the behalf of the defendant, there was an objection made by his counsel, that the defendant is an alien born; and that is an objection to the indictment: He is indicted as a natural-born subject, and they have examined several witnesses to prove him an alien. The proof is strong, and you will find him an alien, and so that matter must be left specially for the judgment of the Court, and you must find the other fact: And if you believe that he did promote the invasion, or conceal and assent to that design, that is, a conspiring the death of the king, then he will be guilty of the treason charged in the indictment.

It has been objected, that in one of the letters, the person who wrote those letters complains, that he had not heard of the prisoner in three months; but that is a mistake, for that was in a postscript wrote by another person, and in a different hand; for the very same letter shews, that there were letters received from him within that time.

They say, there is no direct proof that he intended the life of the king; but if he kept a correspondence, and promoted the intended invasion, that is in law conspiring the death of the king.

They have produced some people who have given an extraordinary sort of evidence, of what Mr. Buckley and my lord Townshend should say about this matter, as if they promised him great things, if he would swear against Mr. Harvey. Simon Francia said, that Mr. Buckley told him, if his brother would swear against Mr. Harvey, he should have a good reward; and that my lord Townshend said, he had given him five guineas, and he should have more.

Lucy White said, that she was in Newgate, and Francia desired her to conceal herself when Mr. Buckley came: That Mr. Buckley told him, he must swear right or wrong for the government; and if he did not swear against Mr. Harvey, Mr. Buckley would charge him with high-treason, for he had cheated my lord Townshend of his money, and done nothing for it.

Mary Meggison swears, that Mr. Buckley should say, he would swear against him, because he had cheated my lord Townshend of five guineas, and would not swear against Mr. Harvey.

Mr. Buckley was called again, and he denies it: he says there was no such thing. And it seems improbable that a man of his credit should talk thus to the prisoner; therefore the credit of Mr. Buckley must be left to you, against the credit of those two women. He tells you, that Francia sent to him, to desire to speak with him, not about Mr. Harvey, but on behalf of one Flint, who is a prisoner in Newgate, and was concerned in writing the Shift-Shifted; and Francia sent a message to Mr. Buckley, that he could do a service in suppressing it. Mr. Buckley went to him, and he desired some favour on behalf of Flint, which was granted: and Mr. Buckley denies he had any discourse with the prisoner about Mr. Harvey.

Revell was called, and he proves, that Francia sent him to Mr. Buckley, to desire he might speak to him. That he ordered Revell to stand at the door, and he did so, but did not hear what they said.

My lord Townshend tells you, that Mr. Buckley gave him an account, that Francia had sent to him, for the purpose which he mentioned before: that my lord ordered him to go: that he went accordingly, and he gave my lord an account what he had done about the matter, and Flint had some favour shewn him.

As to Simon Francia, my lord says, he was several times with him, but my lord never proposed any reward for swearing against Mr. Harvey; but told him, his brother must deal openly, and tell all he knew, and that was the way to recommend himself to favour.

As to the two women, their credit must be left in opposition to my lord Townshend and Mr. Buckley, which of them you will believe, for they deny what the others have sworn.

Then they call another witness Everall: he tells you, that the prisoner's foreign letters were brought to his house; that they lay in an open window, and sometimes remained there some days, and any body might see them; and from thence they infer, that they must be of no great consequence: but how can you infer that? Who can tell by the superscription of a letter who it comes from, or what are the contents of it? But these people cannot say that these were all the letters that were sent to him.

There is an objection made to the book; a witness says, he has looked upon it, and that none of the book seems to be of his hand-writing; he says, Francia writes a fuller hand. Simon Francia has looked upon it, and says, not a syllable is of his writing; and others tell you, they believe it is not his hand, and that he was three months lame of a rheumatism. As for that, it is not material whose writing it is, if it contains the copies of his letters, and he

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servant, and delivered to the servant of colonel Thomas. Colonel Thomas's servant brought a letter in answer back, and delivered it to colonel Gordon's servant; but it did not appear that the letter was in fact ever delivered to colonel Gordon himself; yet Mr. Baron Eyre admitted an attested copy of it to be read against the prisoner: and left it with the jury as legal evidence, if they were of opinion that the original had ever reached the prisoner's hands. Mr. Baron Hotham concurred; but Mr. Justice Gould thought that positive proof ought to have been given, that the original had come into the prisoner's possession, and cited Francia's Case.

has owned before three witnesses, that it is the copy-book of his letters.

Dr. Cade tells you he was ill, and thence they infer, that it is not probable that he should write letters so constantly as he did.' He tells you, that from the 2nd of November 1714, to the 18th of the same month, he was in pain in one of his hands, but does not know which of them, nor whether he was able to write: but this was before this correspondence by letters that have been read to you began.

Then they call some witnesses to his reputation: one tells you, that in discourse with him about the late peace, he said, it would ruin the nation; that sort of evidence is of no signification. Mr. Slater has known him four or five years; there was a commission of bankruptcy against him, on which occasion he became acquainted with him. He says, he always seemed to espouse the interest of the king of France, but he always laughed at our parties among ourselves. Those that were for the interest of France, would of consequence laugh at our divisions.

Richardson says, that he used to go to the prisoner often in his sickness, and knows no harm of him: that Francia liked him, and called him Vulcan, and bid him drink king George's health, and drank it himself.

This is the substance of the evidence that has been given on both sides: now, if you believe these letters were wrote to him and by him, and that they contain a correspondence of a treasonable nature, inciting or encouraging any persons to levy war against the king, or any thing which shews that he was privy and assenting to it, then he is guilty of high treason. If you do not believe those letters were his, or that they do not amount to such a correspondence, then you must acquit him.

If you find him guilty, then you must also find that he was born in France, and is an alien.

Then the Jury withdrew to consider of their verdict; and when they returned into Court, were called over, and answered to their names.

Cl. of Arr. Gentlemen, are you all agreed on your Verdict?—*Jury.* Yes.

Cl. of Arr. Who shall say for you?

Jury. Our Foreman.

Cl. of Arr. Francis Francia, hold up thy hand. (Which he did.) Look upon the prisoner, how say you? Is he Guilty of the High Treason whereof he stands indicted, or Not Guilty?

Foreman. Not Guilty.

Whereupon the prisoner was discharged.

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452. Proceedings on an Impeachment and Act of Attainder, for High Treason, against Henry Lord Viscount Bolingbroke: 1 & 2 George I. A. D. 1715.*

June 10, 1715.

THE House of Commons having taken into consideration the Report from the Committee of Secrecy,† resolved to impeach Henry viscount Bolingbroke of High Treason, and other High Crimes and Misdemeanors.

August 4.

Mr. Walpole, from the Committee of Secrecy, acquainted the House, that the committee had, in obedience to the commands of the House, prepared Articles of Impeachment of High Treason, and other High Crimes and Misdemeanors, against Henry viscount Bolingbroke: and that the committee had commanded him, at the same time, to acquaint the House, that they shall, in a short time, have further Articles to lay before the House against the said viscount: and that the committee had directed him to report the Articles, already prepared, to the House; and he read them in his place, and afterwards delivered them in at the clerk's table: where they were once read; and are as follow; viz.

Articles of Impeachment of High Treason, and other High Crimes and Misdemeanors, against Henry Viscount Bolingbroke.

"Whereas a Treaty of Alliance was made and concluded, on or about the 7th day of September 1701, between Leopold then emperor of Germany, his late majesty king William the Third of ever-glorious memory, and their high mightinesses the States General of the United Provinces, for repelling the greatness of the common danger which threatened all Europe, from the duke of Anjou's having taken possession of the monarchy of Spain; wherein it was, among other things, agreed, 'That, in case the said 'confederates shall be forced to enter into a 'war, they shall communicate their designs to 'one another, as well in relation to the actions 'of the war, as all other things wherein the 'common cause is concerned: and that it shall 'not be permitted to either party, when the 'war is once begun, to treat of peace with the 'enemy, unless jointly and by a communica-'tion of counsels:' and, in and by a defensive treaty and alliance, made and concluded in or about the month of November, 1701, between

* See in this same year the Cases of the duke of Ormond, lord Strafford, and lord Oxford.

† See this Report in the Parl. Hist. as referred to in lord Oxford's Case.

his said late majesty king William the third and the States General, it was, among other things, expressly agreed, 'That when the war is be-'gun, the said confederates shall act in concert 'according to the 7th and 8th Articles of the 'Treaty of the 3rd of March, 1677-8, between 'England and Holland; and that no peace nor 'truce or suspension of arms shall be nego-'ciated or made, but according to the 9th and '10th Articles of that Treaty; by which it was 'agreed, that when the allies came once to 'open war, it shall be lawful for neither of 'them afterwards to come to any cessation of 'arms with him who shall be declared and pro-'claimed an enemy, without it be done con-'jointly and with common consent; and that 'no negociation of peace shall be set on foot by 'one of the allies without the concurrence of 'the other; and that each ally shall continual-'ly, and from time to time, impart to the other 'every thing that passes in the said negocia-'tion:' and in and by a Treaty entered into and concluded in or about the month of June, 1703, between her late majesty queen Anne, of ever-blessed memory, and the States General, it was, among other things, agreed, 'that all treaties 'and alliances then subsisting between them 'should be renewed and confirmed:' and whereas a long, bloody, and expensive war had been carried on, by her late majesty, in conjunction with her said allies and other confederate princes, against France and Spain, as well in resentment of the indignity offered to these kingdoms, by their having acknowledged the Pretender king of these realms, as for obtaining a just satisfaction to his imperial majesty, and for the preservation of the Protestant religion, and the balance and liberties of Europe; and from the great successes with which it had pleased Almighty God to bless the confederate arms, they had just reason to hope for an honourable, good, safe and lasting peace; and although the French king was encouraged, in or about the month of April, 1711, to make propositions of peace to her late majesty, signed by M. de Torcy, his secretary of state, which her said majesty having pleased to communicate to the ministers of the States General; she did, however, graciously declare, by Henry viscount Bolingbroke, then Henry St. John, esq. and one of her principal secretaries of state, her sentiments to them, 'that the said propositions 'were too general;' and, at the same time, the said viscount did, in her majesty's name, and by her special command, give them her utmost and most solemn assurances, 'That in making 'peace, as in making war, she would act in 'perfect concert with them;' in which sentiments the States concurring with her majesty, reciprocal assurances of mutual confidence, so necessary to prevent the designs of the enemy, were returned by them to her majesty; notwithstanding which,

ARTICLE I.

"He the said Henry viscount Bolingbroke, then being one of her majesty's principal secretaries of state, and of her most honourable privy council; but having entered into a most treacherous confederacy with the ministers and emissaries of France, to frustrate the just hopes and expectations of her majesty and her people, by disuniting the confederacy at the most critical juncture, when they were ready to reap the fruits of so many triumphs over the common enemy; and most wickedly intending, as far as in him lay, to enable the French king, so exhausted and vanquished as he had been on all occasions, to carry his designs, by a peace glorious to him, and to the ruin of the victorious allies, and the destruction of the liberties of all Europe; and having no regard to the solemn treaties her majesty then stood engaged in, nor to the honour or safety of these kingdoms; did, in or about the months of July or August in the year of our Lord, 1711, maliciously and wickedly form a most treacherous and pernicious contrivance and confederacy, with other evil-disposed persons, then also of her majesty's privy council, to set on foot a private, separate, dishonourable and destructive negociation of peace between Great Britain and France, without any communication thereof to her majesty's allies, according to their said several treaties: and was not only wanting in his duty and trust to her majesty, by not opposing, and, as far as was in his power, by not advising her majesty against going into any private separate negociation with France; but, in execution of his purposes aforesaid, he the said Henry viscount Bolingbroke did advise her late majesty to send Matthew Prior, esq. directly to the court of France, to make propositions of peace, without communicating the same to her majesty's allies; and accordingly the said Matthew Prior, by the advice and with the privity of him the said Henry viscount Bolingbroke and other false and evil counsellors, in or about the months of July or August, in the year of our Lord 1711, was sent in a clandestine manner from England to France, and did communicate the said propositions of peace to the ministers of France; in which the particular interests of Great Britain, as well as the common interest of Europe, were shamefully betrayed; and, in manifestation of his design to exclude her majesty's allies from their just share in the said negociation, an express Article was inserted in the said propositions, by the privity and advice of him the said Henry viscount Bolingbroke, 'that the secret should be inviola-'bly kept, till allowed to be divulged by the 'mutual consent of both parties;' although the French king had, in the propositions signed by M. de Torcy, and transmitted in the month of April preceding, offered to treat with the plenipotentiaries of England and Holland alone, or jointly with those of the allies, at the choice of England; by which treacherous and dangerous advice, he the said Henry viscount Bolingbroke did not only contrive and set on foot a negociation of peace, more advantageous to France than ever France itself had asked; but thereby did put it into the power of the

common enemy, to create incurable jealousies and discords between her majesty and her faithful allies, and to destroy that confidence which had so long and so successfully been cultivated between them, and which was so necessary for their common safety.

ARTICLE II.

"That the French king having in or about the months of August or September 1711, with the privity, and by the contrivance, of the said viscount Bolingbroke and others, sent over M. Mesnager into England, to carry on a separate and clandestine negociation of peace; he the said Henry viscount Bolingbroke did afterwards, in the said month of September, 1711, or thereabouts, secretly and unlawfully, and without any colour of authority, meet, confer, and treat with the said Sieur Mesnager, on the negociations of peace between Great Britain and France; and therein did advise and promote the making a private and separate treaty or convention on the said subject of peace, between the said crowns, without any communication thereof to her majesty's allies; and the said Henry viscount Bolingbroke did afterwards in violation of his oath, and high trust, falsely and treacherously advise her late majesty to sign powers to several persons, for concluding, on her behalf, a pernicious and destructive treaty, or convention, on the said subject of peace with France; and, on or about the said 27th of September, 1711, a dishonourable, destructive and fatal treaty or convention was concluded and signed, by the said Sieur Mesnager on the part of France, and by the earl of Dartmouth and the said viscount, being then two of her majesty's principal secretaries of state and of her privy council, on the part of her majesty, by virtue only of a warrant under her majesty's sign manual under the signet, directed to themselves, but not countersigned, and without the least knowledge or participation of the allies; in which treaty, the immediate interests of Great Britain are given up to France; and, the duke of Anjou being therein admitted to remain king of Spain, the balance of power and the liberties of Europe were thrown into the hands of the House of Bourbon.

ARTICLE III.

"That whereas her late majesty queen Anne did, in or about the 1st of October, 1711, O. S. give instructions to Thomas earl of Strafford her ambassador to the States General of the United Provinces, to communicate to them certain propositions of peace, which had been contrived and concerted between the said Sieur Mesnager and the said viscount and others, intituled, 'Preliminary Articles on the part of 'France to come to a general peace, together 'with her majesty's sentiments and resolutions 'thereupon; and also her majesty's further and 'particular resolutions concerning the prosecu-'tion and carrying on the war against France 'and Spain, in case the States were desirous to 'carry on the said war:' And whereas, for several years before, and till the said month of October 1711, there was open war between her late majesty and the French king; and, the said war continuing, for all the said time and afterwards, the French king and his subjects were enemies to her late majesty; he the said Henry viscount Bolingbroke, being then one of her majesty's principal secretaries of state and one of her majesty's privy council, and a subject of her said majesty, not considering the duty of his allegiance, but having altogether withdrawn the cordial love, and true and due obedience, which every true and faithful subject owned to her said majesty, and designing to give aid and succour and to adhere to the said French king against her said majesty; did, on or about the 2d of October, 1711, during the said war, falsely, wickedly, maliciously, and traitorously, aid, help, assist and adhere to, the said French king, and his subjects, enemies to her said late majesty, against her said late majesty: and in execution and performance of his said aiding, and assisting and adhering, he did, on or about the 2d of October, 1711, falsely, maliciously, and traitorously disclose and communicate her majesty's said instructions to her said ambassador; and was privy to, and did advise, consent, or approve, that the same should be, and accordingly the same were, communicated and disclosed to the said Sieur Mesnager, a subject of the said French king, and an enemy to her late majesty; and, in further execution and performance of his said aiding, assisting, and adhering, he the said Henry viscount Bolingbroke did, in and by a letter, or writing, by him wrote to M. de Torcy, on or about the said 2d day of October, 1711, disclose, communicate, and notify, or did intend to notify, to M. de Torcy, a subject, minister, and secretary to the French king, and an enemy to her late majesty, "That the said Sieur Mesnager was fully informed of her majesty's said instructions to the earl of Strafford;" thereby falsely, maliciously, and traitorously, informing and advising the said M. de Torcy, from what person, and by what means he might come to the knowledge of her majesty's said instructions, contrary to the duty of his allegiance and the laws and statutes of this realm.

ARTICLE IV.

"That whereas her late majesty queen Anne did, in or about the month of December, 1711, in due form of law, under her great seal, constitute the right reverend John lord bishop of Bristol and Thomas earl of Strafford her plenipotentiaries, with full powers and instructions, to meet, treat, and conclude, with the plenipotentiaries of her allies, and those whom the French king should on his part depute for that purpose, the conditions of a good and general peace; and whereas his imperial majesty, their high mightinesses the States General of the United Provinces, and other her majesty's allies, and the French king, having duly constituted and appointed their several and respective plenipotentiaries for the purposes aforesaid, the

negociations and conferences for a general peace were opened between them, at Utrecht, about the months of January or February, 1711, and the same continued till the 4th of March, 1711, and afterwards: and whereas, on the said 4th day of March, 1711, there was open war between her late majesty and the French king, and the same having continued for several years before, and at the same time and afterwards: the said French king and his subjects were during all the said time enemies to her said majesty and her subjects; he the said Henry viscount Bolingbroke, then being one of her majesty's principal secretaries of state, and of her privy council, and a subject of her said majesty, not considering the duty of his allegiance, but having withdrawn his duty and obedience from her said majesty, and conspiring and confederating with the enemies of her said majesty, and the subjects of the said French king, to give him aid and succour against her said majesty, did, on or about the said 4th day of March, 1711, falsely, wickedly, and traitorously, aid, comfort, assist, and adhere to, the said French king, against her said majesty; and in execution and performance of his said aiding, assisting, and adhering, he the said viscount did, on or about the said 4th of March, 1711, falsely, maliciously, and traitorously, communicate and disclose her said majesty's then final instructions to her said plenipotentiaries, relating to the said negociations of peace; or was privy to, and did advise and consent and approve that the same should be, and accordingly the same were, communicated and disclosed to abbot Gaultier, an agent and emissary of the said French king, and an enemy of her said majesty; and, in further execution and performance of his said aiding, assisting, and adhering, he the said Henry viscount Bolingbroke did, by a letter, or writing, wrote by himself, on or about the said 4th of March, falsely, maliciously, and traitorously, disclose, communicate, and notify, or did intend thereby to communicate and notify, to M. de Torcy, a minister, secretary of state, and subject of the said French king, and an enemy of her said majesty, "That the said Gaultier was informed of her majesty's said instructions to her said plenipotentiaries;" thereby falsely and traitorously informing and advising the said M. de Torcy by what means, and from what persons, he might have the knowledge of her majesty's said instructions, contrary to the duty of his allegiance, and the laws and statutes of this realm.

ARTICLE V.

"That whereas the States General of the United Provinces were, in or about the months of September or October in the year of our Lord 1712, in possession of the strong and important town and fortress of Tournay; and whereas the French king, had, during the course of the said private, separate, and traitorous negociation between him the said Henry viscount Bolingbroke and others, and the ministers of France, signified his consent to the ministers of Great Britain, that the said town and fortress of Tournay should remain to the said States General as part of their barrier: and whereas her majesty, in her instructions of December the 23d, 1711, to her plenipotentiaries at Utrecht, had expressly directed them to insist with the plenipotentiaries of France, in the general congress, "That, towards forming a sufficient barrier for the States General, Tournay should remain to their high mightinesses;" and did afterwards declare herself conformably thereunto, in a Speech to both Houses of Parliament, on the 6th of June, 1712, in which she communicated to them the terms whereon a peace might be made, and whereas, for several years before and till the said months of September and October in the year of our Lord 1712, there was open war between her late majesty and the French king, and, the said war continuing, for all the said time and afterwards, the said French king and his subjects were enemies to her majesty; he the said Henry viscount Bolingbroke, then being one of her majesty's principal secretaries of state and of her privy council, and a subject of her said majesty, not considering the duty of his allegiance, but having altogether withdrawn the cordial love and true and due obedience which every true and faithful subject owed to her said majesty, and designing to give aid and succour and to adhere to the said French king, against her said majesty, did, in or about the months of September or October, 1712, during the said war, falsely, maliciously, wickedly, and traitorously, aid, help, and assist, and adhere to, the said French king, then an enemy to her late majesty, against her said majesty; and, in execution and performance of the said aiding, assisting, and adhering, maliciously, falsely, and traitorously, did counsel and advise the said enemy, in what manner, and by what methods, the said important town and fortress of Tournay, then in possession of the States General, might be gained from them to the French king, contrary to the duty of his allegiance, and the laws and statutes of this realm.

ARTICLE VI.

"That whereas her late majesty queen Anne, not only in pursuance of the treaties she stood engaged in to her good allies, and in particular to his imperial majesty, for the recovery of the monarchy of Spain to the House of Austria, thereby to preserve a due balance of power in Europe: but also from her just resentments against the duke of Anjou, who then stiled himself king of Spain, and who in defiance of her majesty's title to the crown, had acknowledged the Pretender as king of Great Britain, and, on these just foundations, her majesty had, in vindication of the honour of the crown, and in justice to her people, at a vast expence of blood and treasure, and on the earnest and repeated advices of her parliament, prosecuted a vigorous war against the said duke of Anjou; and whereas, in the years of our Lord 1710, 1711, and 1712, the said open, bloody, and expensive war was carried on, be-

tween her said late majesty queen Anne and the said duke of Anjou; and, during all the time aforesaid, the said war did continue, and for all that time the said duke of Anjou and the subjects of Spain adhering to him were enemies of her late majesty; he the said Henry viscount Bolingbroke, then being one of her majesty's principal secretaries of state and of her privy council, and a subject of her said majesty, not considering the duty of his allegiance, but having withdrawn his true obedience from her said late majesty, did at several times, in the said years of our Lord 1710, 1711, and 1712, falsely, maliciously, wickedly, and traitorously, aid, help, assist, and adhere to the said duke of Anjou, then an enemy to her said late majesty, against her said majesty; and in execution and performance of his said aiding, helping and assisting, and adhering, and in confederacy and combination with the then enemies of her late majesty, and with divers other wicked and evil-disposed persons, did at several times, in the years aforesaid, advise and counsel the enemies of her late majesty against her said majesty; and, in such counselling and advising, did concert with them, and did promote the yielding and giving up Spain and the West-Indies or some part thereof, to the said duke of Anjou then in enmity with her majesty, against the duty of his allegiance, and the laws and statutes of this realm.

"All which Crimes and Misdemeanors were committed and done by him the said Henry viscount Bolingbroke, against our late sovereign lady the queen, her crown and dignity, the peace and interest of this kingdom, and in breach of the several trusts reposed in him the said viscount; and he the said Henry viscount Bolingbroke was one of her majesty's principal secretaries of state, and one of her privy council, during the time that all and every the crimes before set forth were done and committed."

To which, after inserting as an amendment after "majesty," the words "of ever-blessed memory," the House agreed.

August 6. The following Clause was added to the Articles of Impeachment:

"For which matters and things, the knights, citizens, and burgesses of the House of Commons, in parliament assembled, do, in the name of themselves and of all the Commons of Great Britain, impeach the said Henry viscount Bolingbroke of High Treason, and other High Crimes and Misdemeanors, in the said Articles contained. And the said Commons, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any other accusations or impeachments against the said Henry viscount Bolingbroke, and also of replying to the answers which the said Henry viscount Bolingbroke shall make to the premises, or any of them, or to any impeachment or accusation that shall be by them exhibited, according to the course and proceedings of parliament; do pray, that the said Henry viscount Bolingbroke be put to answer all and every the premises; and that such proceedings, examinations, trials, and judgments, may be upon them, and every of them, had and used, as shall be agreeable to law and justice: and they do further pray and demand, that the said Henry viscount Bolingbroke may be sequestered from parliament, and forthwith committed to safe custody."

August 9. The Lords acquainted the Commons, that after diligent search and enquiry after lord Bolingbroke, he could not be found; and thereupon the Commons ordered in a Bill to summon him to render himself to justice by a day therein to be limited, or in default thereof, to attaint him of high treason.

On the next day, August the 10th, Mr. Walpole presented the Bill, which was read a first time: on the morrow it was read a second time; on the 12th it passed through the committee; on the 13th, the report was received; on Monday, the 15th, it was read a third time, and passed by a majority of 98 against 23, and sent to the Lords. By them it was read a first time that same day, and a second time on the morrow. On the 18th (after some obstruction by a motion to enquire whether lord Bolingbroke had been summoned, and in what manner) it went through the Committee, and the same day it was passed; the following Protest being entered against it:

"Dissentient,

"1st, Because we cannot give our consent to the affirming, that the lord to be attainted by this Bill is fled from justice, being known to have left England before he was impeached in parliament; nor does it appear to us, that the lord so impeached has had any summons to return, or legal notice, by proclamation or otherwise, of the charge brought up against him.

"2dly, Because no particular proofs have been laid before the House of any high treason, or other high crimes or misdemeanors with which he stands charged: nor has any evidence been given to this House of his adhering to the king's enemies; or being concerned in any traitorous design since he left England.

"3dly, Because the time prescribed for his return is much shorter than what has been allowed to persons in like circumstances of supposed guilt, though of far meaner condition and character; nor do we know or believe, that there is any instance of any person whatsoever, who was out of the kingdom at the time of his being impeached in parliament, who has not had a longer day assigned for his return, before he was to stand and be adjudged attainted, or actually incur any other high pains and penalties inflicted by act of parliament.

"And we think such allowance of a longer day, in the case of attainders by parliament, to be much the more reasonable, as it is agreeable, not only to parliamentary usage, but to the methods of common law, in all cases of outlawry, whereby more months are allowed to the most notorious traitor (known to be fled from justice) for his coming in, before his outlawry

can be recorded, than this act allows weeks, to the lord impeached, for his returning before his attainder takes place.—Fran. Cestriens. (Gastrell), Scarsdale, Willoughby de Broke, Compton, Foley, Jersey, Strafford, Abingdon, Bathurst, Ashburnham, Weston, Masham, Lansdowne, Clarendon, Fr. Roffen. (Atterbury.")

This Bill, and that against the duke of Ormond, received the royal assent on August 20th. Some particulars respecting its progress, are noticed by Mr. Hatsell in the 4th volume of his Precedents, title Impeachment, chap. 3.

In 1723, Bolingbroke obtained from George the First a pardon, under the protection of which he immediately returned to England, and upon his journey was at Calais at the same time with Atterbury, who was landed there under his sentence of banishment. The bishop exclaimed, "We are exchanged." It is said Bolingbroke expected that the new parliament would reverse his attainder. This expectation, however, by the intervention, as has been reported, of Walpole,* was frustrated. However on April 20, 1725, Bolingbroke presented to the House of Commons a Petition, praying that leave might be given to bring in a Bill for enabling him and the heirs male of his body, notwithstanding his attainder, to take and enjoy the settled estate of his family, and for enabling him to hold and enjoy personal estate or effects, and to invest the same in the purchase of any real or personal estate within the kingdom. To the presentation of this Petition, Walpole, chancellor of the exchequer, signified the king's consent. On the same day, upon the question for leave to bring in a Bill accordingly, the Yeas were 231, the Noes 113. The Bill was therefore brought in, but two divisions occurred upon it during its passage through the House of Commons, one upon a motion opposed by Walpole, to disable Bolingbroke from sitting in either House of Parliament, or holding any office or place of trust or profit under the king; which was rejected, the Yeas being 84, the Noes 154. The other upon the question for the Bill's passing, the Yeas being 81, and the Noes 36. In the House of Lords (who required the pardon of Bolingbroke to be produced, and referred it to the judges); the Bill was strongly opposed, and gave rise to three protests; one upon the question for its commitment; one upon the question for its recommitment; and the third (upon May 24th) on the question for its passing. The last is as follows:

"Dissentient,

1. "Because the purport and intention of this Bill is to repeal several acts of parliament passed since his majesty's accession, whereby all the estate and interest of the late lord Bolingbroke, in the lands mentioned in this Bill, being forfeited to the crown for high treason, were vested in trustees, and still remain appropriated for the use and benefit of the public; the value of which lands amount, as we believe, to several thousand pounds per annum; we therefore think it unjust to all the subjects of this kingdom, who have borne many heavy taxes, occasioned, as we believe, in great measure, by the treasons committed, and the rebellion which was encouraged by this person, to take from the public the benefit of his forfeiture.

2. "It appears from the Articles of Impeachment exhibited by the Commons against the late lord Bolingbroke, whereof he now stands attainted by act of parliament, that he stood charged with the commission of several treasons of the most flagrant and dangerous nature, committed by him whilst he was secretary of state to her late majesty queen Anne, for traitorously betraying her most secret councils to the king of France, then at war and in enmity with her majesty; and with other treasons tending to destroy the balance of Europe, and to raise the then exorbitant power of the French king, who not long before had publicly acknowledged the Pretender to be the lawful and rightful king of these realms.

3. "The treasons wherewith he was charged, we conceive, were fully confessed by his flight from the justice of parliament; but his guilt was afterwards, as we think, indisputably demonstrated by the new treasons he openly and avowedly committed against his present majesty; it being notorious, and it having been declared to the House on the debate of this Bill, that he did, soon after his flight, enter publicly into the councils and services of the Pretender, who was then fomenting and carrying on a rebellion within these kingdoms for the dethroning his majesty, into which rebellion many of his majesty's subjects, as well peers as commoners, were drawn, as we believe, by the example or influence of the late lord Bolingbroke; and for which treason many peers and commoners have been since attainted, and

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* Yet Walpole's son (Catalogue of Royal and Noble Authors) says of Bolingbroke, "He wrote against the late king who had forgiven him; against sir Robert Walpole who did forgive him; against the Pretender and the clergy, who never will forgive him." Upon which a critic of the Monthly Review observes, "That Bolingbroke wrote against the king, who had forgiven him, is certain; but that he wrote against sir Robert Walpole, who did forgive him, we cannot admit. He wrote against sir Robert, because he did not forgive him; and because he prevented his being restored to those honours, which he wished to recover. That sir Robert was implacable against him, appears from a speech, which he made in the House, and which he concluded with the following imprecation: 'May his attainder never be reversed, and may his crimes never be forgotten!'" Monthly Rev. vol. 19, p. 567, as cited in a Note to Walpole's Catalogue, edition of 1806. See, too, Coxe's Memoirs of sir Robert Walpole.

some of them executed, and their estates both real and personal become forfeited by their attainders, and as yet continue under those forfeitures.

4. "We have not been informed of any particular public services which this person hath performed to his majesty or this nation, since his commission of the many high and dangerous treasons before-mentioned, and in case he has done any, they must be of such a nature as ought, in our opinions, to be rewarded in another manner than is provided by this Bill, and for which, we think, the crown is otherwise sufficiently enabled; and the sincerity of his having quitted the interest of the Pretender may, in our opinions, be justly suspected, he never having, as appears to us, throughout the progress of this Bill in both Houses, once signified his sorrow for the treasons he had committed; and if he had really abandoned that interest, his private intelligences or services, with regard to the interest or councils of the Pretender, cannot reasonably be supposed, in our opinions, to be of great value.

5. "We think that no assurances which this person hath given, nor any services he can have performed since his commission of the treasons aforesaid, or any farther obligations he can enter into, can be a sufficient security to his majesty, or the kingdom, against his future insincerity, which may happen, he having already so often violated the most solemn assurances and obligations, and in defiance of them having openly attempted the dethroning of his majesty, and the destruction of the liberties of his country.

6. "We think the services he may have performed, if any, ought not to be rewarded either in the degree or the manner provided by this Bill, it having been found by experience, in cases of like nature, that the strongest assurances have afterwards proved deceitful; for which reason we conceive it to be unwise and dangerous to give such rewards as cannot be recalled, though the assurances should be broke; and we believe it to be the known policy and universal practice of wise governments to keep the persons, claiming merit from such services as the late lord Bolingbroke can possibly have performed since the commissions of his treasons, dependent on the government for the continuance of those rewards.

7. "The pardon of the late lord Bolingbroke, under the Great Seal, having been communicated to the House, and under consideration on the debate of this Bill, we think, that this Bill ought not to pass, because it may hereafter be construed, in some degree, to confirm or countenance that pardon; and we are of opinion, that that pardon, though it may be legal as to the treasons committed by him since his attainder, yet so far as it may be construed, if that should be, to pardon or affect the act of attainder of the late lord Bolingbroke, or the impeachment of the Commons, on which that act is founded, it is a most dangerous violation of the ancient rights and freedom of the kingdom, and will defeat the whole use and effect of the impeachments by the Commons; which is, as we think, the chief institution, arising even from the constitution itself, for the preservation of the government, and for the attaining parliamentary justice; and tends, as we conceive, to render the rights and jurisdicture of this House, on impeachments and bills of attainder, vain and useless; all which ancient rights of both Houses, and of the subjects of this nation, were saved to them by the Revolution, and were intended, as we conceive, to have been for ever preserved to them in their full extent, by the act passed in the reign of the late king William, of ever glorious memory, by which the crown of these realms is limited and settled on his present majesty and his issue, and in which act it stands declared, that no pardon under the Great Seal shall be pleadable to an impeachment of the Commons.

8. "We are of opinion, that the power of dispensing mercy is an ancient inherent right of the crown of these realms, and the exercise of it of great benefit to the people, when it is wisely and properly applied; but it being incumbent on us, in the vote we give for or against passing this Bill, to judge between the late lord Bolingbroke, and to consider the right and title he appears to us to have to the benefits of this Bill, and the concern, which, on the other side, the honour, interest and safety of the king and his royal family, and the whole kingdom, have, in our opinion, from the consequences of it, we think we cannot be justified in our own thoughts, with regard to the latter, or to our posterity, if we should consent that this Bill should pass.—*(Signed)* Bristol, Coventry, Onslow, Clinton, Lechmere."

On the 31st of May, the Bill received the Royal Assent, but Bolingbroke never recovered his Peerage.

453. Proceedings on an Impeachment and Act of Attainder, for High Treason, against JAMES Duke of ORMOND: 1 & 2 GEORGE I. A. D. 1715.*

ON the 21st of June, 1715, the House of Commons resolved to impeach James duke of Ormond for High-Treason, and other High Crimes and Misdemeanors, and referred it to the Committee of Secrecy,† to draw up Articles of Impeachment and prepare evidence against him.

Aug. 5. Mr. Walpole, from the Committee of Secrecy, acquainting the House, that the committee had, in obedience to the commands of the House, prepared Articles of Impeachment of High-Treason, and other High Crimes and Misdemeanors, against James duke of Ormond; which they had directed him to report to the House; which he read in his place, and afterwards delivered in at the clerk's table: Where they were once read throughout; and are as follows; viz.

ARTICLES OF IMPEACHMENT OF HIGH TREASON, AND OTHER HIGH CRIMES AND MISDEMEANORS, AGAINST JAMES DUKE OF ORMOND.

ARTICLE I.

"That whereas James duke of Ormond, in or about the month of April, 1712, being appointed general of the forces in the Netherlands of her late majesty queen Anne, with orders to prosecute the war against France with all possible vigour, in conjunction with her said majesty's allies; and having, by her said majesty's directions, and in her name, given her said allies the most solemn assurances to that purpose, was thereupon admitted into the councils, and made privy to the most secret designs, of the generals of the confederate army against the common enemy, and of the measures they thought the most proper to carry on the war with success: and whereas, in the said year 1712, the said war was carried on between her said late majesty queen Anne and the said French king; and during all the said year the war did continue, and for all that time the said French king and his subjects were enemies of her late majesty, he the said James duke of Ormond, then general of her majesty's army, and a subject of her majesty, not considering the duty of his allegiance, but having withdrawn his true and due obedience from her said late majesty, and affection from his country, did, during the said war, falsely, maliciously, wickedly, and traitorously, aid, help, assist and adhere to, the said French king, against her said late majesty; and, in execution of his said aiding, helping, assisting, and adhering, maliciously, falsely, and traitorously, contrary to the duty of his allegiance, and the laws and statutes of this realm, did, on or about the 26th day of May, 1712, send private intelligence and information to marshal Villars, then an enemy to her said late majesty, and general of the French king's army against her majesty and her allies, of a march the army of her said majesty and of her allies was then going to make, and of the design of the said army in making that march.

ARTICLE II.

"That whereas, in or about the month of May, 1712, a traitorous design was carried on between Henry St. John esquire, then one of her said late majesty's principal secretaries of state, and other evil-disposed persons, and the ministers of France, to defeat the just expectations of the great advantages over the common enemy her majesty and the nation had then reason to hope for, from the great superiority of the confederate forces in the Netherlands; to obtain which, very large sums of money had been cheerfully contributed by parliament: and to that end the said Henry St. John had given secret assurances to the French ministers, 'That her majesty's general in the Netherlands, though under the most solemn engagements to act vigorously in concert with the allies, should not act against France;' and had also engaged the said duke of Ormond to concur in the said wicked purpose; which evil practices of the said Henry St. John and others, when they were first suspected, giving the greatest alarm to the ministers of the allies, the parliament, and to the whole kingdom, and being thereupon openly disavowed and denied by all the conspirators in the most public manner; he the said James duke of Ormond, in order to disguise and conceal from her said late majesty and the whole kingdom the said traitorous designs, then carrying on by the said Henry St. John and other false traitors to her majesty and their country, in aid and comfort of the French king, then in open war with, and an enemy of her said majesty, did, by his letter of the 25th of May, 1712, to the said Henry St. John, then her majesty's principal secretary of state, called his public letter, because prepared and intended to be read before her said majesty and her council, wickedly, falsely and treacherously, abuse and impose upon her said late majesty and her council, by affirming and

* See in this same year the Cases of lord Bolingbroke, lord Strafford, and lord Oxford.

† See the Report of this Committee in the Parliamentary History, as referred to in lord Oxford's Case.

declaring therein, 'That, if he found an op-'portunity to bring the enemy to a battle, he 'should not decline it;' although, by a private letter writ by the said James duke of Ormond, of the same date, and to the said Henry St. John, designed to be read by the said Henry St. John and the said conspirators only, he the said James duke of Ormond, did on the contrary, wickedly promise and engage, 'That 'he would not attack or molest the French 'army, or engage in any siege against France.'

ARTICLE III.

"That he the said James duke of Ormond, in or about the month of June, 1712, being at that time general of her majesty's forces against France, and a subject of her said majesty, not considering the duty of his allegiance, but having altogether withdrawn the cordial love and due obedience which every faithful subject owed to her said majesty, and devoting himself to the service of France, and designing to give aid and comfort to the French king and his subjects, then in open war with, and enemies to her said late majesty, in violation of the many treaties of alliance between Great Britain and several other princes and states, for carrying on the war against France, and of the said late queen's instructions to him, on or about the 7th of April, 1712, under the sign manual; in pursuance thereof, and of the solemn declarations he had but lately before, by her said majesty's command, and in her name, made to the pensionary of Holland and the generals of the confederate army, to push on the war with all possible vigour; and also in open and manifest violation of the last orders sent to him in a letter from the said Henry St. John, on or about the 7th of June, 1713, whereby he the said James duke of Ormond was directed, 'To make 'no cessation of arms with the French, unless 'the articles demanded by her majesty, and 'expressly mentioned and set down in the said 'letter, as the conditions for the said cessation, 'should be complied with by France;' and whereby he the said James duke of Ormond was likewise further expressly directed and told, 'That in case the conditions therein mentioned 'were not complied with by France, that then 'he was entirely free from restraint, and at 'liberty to take all reasonable measures in his 'power, for annoying the enemy, and at full 'liberty of acting against France;' did, on or about the 25th of June, aforesaid, falsely, maliciously, wickedly, and traitorously, aid, help, assist, and adhere to the French king against her said late majesty, and then in open war with her majesty; and, in execution of his said aiding, helping, assisting, and adhering, and in pursuance of a wicked promise he had secretly made the same day to marshal Villars, general of the French army, to that purpose, maliciously, falsely, and traitorously, contrary to the duty of his allegiance and the laws and statutes of this realm, did advise, and endeavour to persuade, the generals of the confederate army against France, and the deputies of the States General, to raise the siege of Quesnoy, a French town then besieged by them; and did then further, traitorously and wickedly, refuse to act any longer against France; and then also, traitorously and wickedly, told the said generals of the said confederate forces, and the said States' deputies, 'That he could no longer cover the siege of 'Quesnoy; but was obliged, by his instruc-'tions, to march off with the queen's troops, 'and those in her majesty's pay;' Whereas in truth, and the Commons expressly charge, that he the said James duke of Ormond did traitorously and wickedly make the said declaration, and refused to act against France, in manifest contradiction not only to his said original orders, but also of the said letter to him of the 7th of June from the said Henry St. John; since none of the articles demanded by her majesty for a cessation of arms, and expressed in the said letter to be the conditions without which no cessation of arms was to be made, had been complied with by France. And, in further execution of his said traitorous designs, he the said James duke of Ormond, by a letter to the said marshal Villars on the 25th of June aforesaid, did traitorously and wickedly send intelligence to the said marshal Villars of the before-mentioned passages between him the said James duke of Ormond, and the generals of the confederate army and the States deputies, and how his propositions were received by them; and also of the disposition he observed in the foreign troops to adhere to the said confederates, in case of a separation by the troops of Great Britain.

ARTICLE IV.

"That he the said James duke of Ormond did not only wickedly and falsely affirm to the generals of the confederate army and the States' deputies, 'That his said refusal to act any 'longer against France, and to cover the siege 'of Quesnoy, was in pursuance of instructions 'he had received for that purpose;' but also, to induce the said generals of the confederate army and the States' deputies to comply with his proposal to them to abandon the said siege; he the said James duke of Ormond did wickedly represent their compliance therein as the most effectual way to induce her said late majesty to take care of the said confederates' interest at the peace; whereby he the said James duke of Ormond did, in effect, threaten her said majesty's good friends and allies, 'That, 'unless they would dishonourably abandon an 'enterprise undertaken by common consent, 'and thereby save a strong fortress and a nu-'merous garrison of the enemy, they were not 'to expect that her majesty would take care of 'their interests at the general peace.'

ARTICLE V.

"That he the said James duke of Ormond having received a letter, dated on or about the 14th of July, 1712, from the said marshal Villars the French general, desiring 'To be in-

'formed what troops remained with the confe-
'derate army, or what troops and generals
'marched off from them with him the said
'duke: and declaring at the same time, that
'the reason of that inquiry was in order to fall
'upon and attack the said confederate army;'
he the said James duke of Ormond, on or about the 16th day of July 1712, did traitorously, and wickedly, contrary to the duty of a true and faithful subject, and contrary to his allegiance and the laws and statutes of this realm, aid, help, assist, and adhere to, the said French king and his subjects, against her said late majesty, and then in open war with, and enemies to, her said late majesty; and, in execution of his said aiding, helping, assisting, and adhering, he the said James duke of Ormond on or about the said 16th day of July, 1712, did traitorously send secret intelligence to the said marshal Villars, the general of the French army, of the number of the troops that had left the said confederate army, and also of the march the said confederate army had that morning made.

ARTICLE VI.

"And whereas he the said James duke of Ormond had received advice that the States General, in or about the month of October, 1712, had formed a design to surprise and take the towns of Nieuport and Furnes, or one of them, then in the possession of the French king: that he the said James duke of Ormond, intending to strengthen the hands of the common enemy, by defeating the said enterprize, did, on or about the 21st day of October, 1712, in a letter to the said Henry St. John, then viscount Bolingbroke, wickedly and basely suggest to and advise her said late majesty to send secret intelligence of, and to betray, the said counsels and designs of her good and faithful allies the States General, to the French king, then in the war with, and an enemy to, her majesty; and did further wickedly and shamefully suggest the means of putting the said treachery in execution, by giving private intelligence of the design to the said marshal Villars.

"All which Crimes and Misdemeanours were committed and done by him the said James duke of Ormond, against our late sovereign lady the queen, her crown and dignity, the peace and interest of this kingdom, and in breach of the several trusts reposed in him the said duke: and he the said James duke of Ormond was general of her majesty's forces in the Netherlands, and one of her privy council, during the time that all and every the crimes before set forth were done and committed."

To which the House agreed; and on the next day, the House agreed to the following additional clause:

"For which matters and things, the knights, citizens, and burgesses, of the House of Commons, in parliament assembled, do, in the name of themselves, and of all the Commons of Great Britain, impeach the said James duke of Ormond of High Treason, and other High Crimes and Misdemeanors in the said Articles contained: And the said Commons, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any other accusations or impeachments against the said James duke of Ormond; and also of replying to the Answers which the said James duke of Ormond shall make to the premises, or any of them, or to any impeachment or accusation that shall be by them exhibited, according to the course and proceedings of parliament; do pray, that the said James duke of Ormond be put to answer all and every the premises; and that such proceedings, examinations, trials, and judgments may be, upon them, and every of them, had and used, as shall be agreeable to law and justice: And they do further pray and demand, that the said James duke of Ormond may be sequestered from parliament, and forthwith committed to safe custody."

August 10.

The Lords acquainted the Commons that diligent search and enquiry had been made after the duke of Ormond, but that he was not to be found, whereupon the Commons ordered in a Bill to summon him to render himself to justice by a day therein to be limited, or in default thereof, to attaint him of High Treason.

On the next day, August 11th, Mr. Secretary Stanhope presented such Bill, which on that day was read a first time: On the morrow a second time: On the next day was committed. On Monday the 15th, the Report was received, and on Tuesday the 16th the Bill was read a third time; passed by a majority of 94 against 22, and sent to the Lords.

By the Lords, it was on that same day read a first time; on the 18th a second time.

On this day a Petition of the duchess of Ormond was presented to the House, praying (in consideration of the duke's being beyond sea, and of the difficulty and uncertainty of apprising him of the provisions of the Bill) that the time for his surrender should be enlarged beyond the day fixed by the Bill, viz. the 10th of September. The Petition was ordered to lie on the table; and the Bill was forthwith committed, reported, read a third time, and passed.*

Against this Bill protested, without reasons, Geo. Bristol; and "For the reasons given

* The Bill for attainting Bradshaw, Cromwell, Ireton, and Pride was read a first and second time on the day of its presentation; upon the suggestion of Prynn, "because the traitors heretofore read their act for the trial of the king twice together." See 4 Hatsell's Precedents, p. 221, note.

against the Bill, intituled, An Act for the Attainder of Henry viscount Bolingbroke of High Treason; unless he shall render himself to justice by a day certain, therein mentioned.—Scarsdale, Willoughby de Broke, Compton, Foley, Geo. Bath and Well. (Hooper), Fr. Roffen. (Atterbury) Fran. Cestriens. (Gastrell) Strafford, Abingdon, Bathurst, Ashburnham, Weston, Masham, Lansdowne, Clarendon."

This Bill, with that against Bolingbroke, received the royal assent on August 20th.

The rest of Ormond's life was passed abroad in adherence to the Pretender.

There is a curious anecdote of an interview between Ormond and Oxford, presently before the flight of the former.

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454. Proceedings on an Impeachment of Thomas Earl of Strafford, for High Crimes and Misdemeanors; 1 & 2 George I. A. D. 1715.*

On the 22nd of June, 1715, the House of Commons resolved to impeach Thomas earl of Strafford of High Crimes and Misdemeanors, and referred it to the Committee of Secrecy † to draw up Articles of Impeachment, and prepare evidence against him.

August 31, 1715. Mr. Walpole, from the Committee of Secrecy, acquainted the House, that the Committee had, in obedience to the commands of the House, prepared Articles of Impeachment of High Crimes and Misdemeanors against Thomas earl of Strafford; and he read the same in his place, and afterwards delivered them in at the clerk's table; where they were read, and are as follow:

Articles of Impeachment of High Crimes and Misdemeanors, against Thomas Earl of Strafford.

"Whereas his late majesty king William the third, of ever glorious memory, out of his great wisdom and tender regard for his own kingdoms and the Protestant Succession, and to vindicate the honour of the crown and nation, then affronted by France, in proclaiming the Pretender king of Great Britain, after the French king had but lately before acknowledged his majesty's title to the same, as well as from a just concern for the preservation of the liberties of Europe, against the growing power of France, which was then become more formidable from the duke of Anjou's having taken possession of the entire Spanish monarchy, did, upon the advice and request of both Houses of Parliament, in or about the month of September, 1701, enter into, make, and conclude, a treaty with Leopold emperor of Germany, and the States General of the United Provinces; wherein a strict conjunction and alliance amongst themselves being thought necessary for repelling the greatness of the common danger, it was, amongst other things, agreed, That there should be and continue, between the said confederates, a constant, perpetual, and inviolable friendship and correspondence; and that each party should be obliged to promote the advantages of the other, and prevent all inconveniences and dangers that might happen to them, as far as lay in their power: that the said allies, desiring nothing more earnestly than the peace and general quiet of all Europe, had adjudged, that nothing could be more effectual for the establishment thereof, than the procuring an equitable and reasonable satisfaction to his imperial majesty for his pretensions to the Spanish succession; and that the king of Great Britain and the States General might obtain a particular and sufficient security for their kingdoms, provinces, and dominions, and for the navigation and commerce of their subjects; that it should not be permitted to either party, when the war is once begun, to treat of peace with the enemy, unless jointly and by a communication of councils; and no peace should be made, unless an equitable and reasonable satisfaction for his imperial majesty, and a particular security for the kingdoms, provinces, dominions, navigation, and commerce, of his majesty of Great Britain and the States General, be first obtained; and unless care be taken, by fitting security, that the kingdoms of France and Spain shall never come and be united under the same government, nor that one and the same person shall be king of both kingdoms. And whereas his said late majesty king William and the States General, seriously considering that France was then become so formidable, from the accession of Spain to the duke of Anjou, that, in the opinion of all the world, Europe was in danger of losing her liberty, and undergoing the heavy yoke of universal monarchy; and that the surest means of effecting that design were, to divide the king of Great Britain from the States General, for which purpose all imaginable efforts would be made; they therefore thought it ne-

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* See in this same year, the Cases of lord Bolingbroke, the duke of Ormond, and lord Oxford.

† See the Report of this Committee in the Parliamentary History as referred to in lord Oxford's Case.

cessary to unite in the strictest manner that was possible; and, to that end, a defensive treaty and alliance was concluded and entered into between them, in or about November, 1701, wherein amongst other things, it was further agreed, 'That by the alliance with the emperor, made in September then last, particular care being taken for the recovery of the Spanish Low Countries out of the hands of the most Christian king, the said confederates expressly engaged to aid one another with all their forces for the recovery of the same; and in regard the principal interest of the said confederates consisted in the preservation of the liberties of Europe, that the beforementioned treaty with the emperor shall be faithfully and sincerely executed, and both sides shall guarantee the same, and use their endeavours, to confirm and render it more strong from time to time: that, in making peace, particular care shall be taken of the commerce and traffic of both nations, and also for their security as well in regard to the Low Countries as the countries adjacent: that, when the war is begun, the confederates shall act in concert, according to the seventh and eighth Articles of the Treaty of the 3rd of March, 1667-8, between England and Holland, which was thereby renewed and confirmed; and no peace nor truce, or suspension of arms, shall be negociated or made, but according to the ninth and tenth Articles of that Treaty; by which it was agreed, that, when the two allies came once to an open war, it shall be lawful for neither of them afterwards to come to any cessation of arms with him who shall be declared and proclaimed an enemy, without it be done conjointly and with common consent; that no negociation of peace shall be set on foot by one of the allies, without the concurrence of the other; that each ally shall continually, and from time to time, impart to the other every thing that shall pass in the said negociation; and shall stipulate with the common enemy for the same rights, immunities, exemptions, and prerogatives, for his ally, as he should do for himself, if so be the said allies do not agree to the contrary.' And whereas the French king, having got possession of a great part of the Spanish dominions, exercised an absolute authority over that monarchy, having seized Milan and the Spanish Low Countries by his armies, and made himself master of Cadiz and of the entrance into the Mediterranean, and of the ports of the Spanish West Indies, by his fleets, every where designing to invade the liberties of Europe, and to obstruct the freedom of navigation and commerce; and, instead of giving the satisfaction that was justly expected, had proceeded to further violences and indignities; and, having influenced Spain to acknowledge the Pretender, and thereby to concur with him in the said affront; her late sacred majesty queen Anne, taking notice, 'that she found herself obliged, for maintaining the public faith, for vindicating the honour of the crown, and to prevent the mischiefs which all Europe were threatened with, to declare war against France and Spain,' did accordingly, in the month of May, 1702, in the most public and solemn manner proclaim the same; as his imperial majesty and the States General did likewise do, in or about the said month of May, in pursuance of the beforementioned Treaties. And whereas many kings, princes, and states of Europe, being invited by the said grand alliance, and relying on the faith thereof, did afterwards become parties to the said confederate war against France and Spain; and, in the Treaty entered into in or about the month of May, 1703, between his imperial majesty, the queen of Great Britain, the States General, and the king of Portugal, it was, amongst other things, expressly stipulated, 'That no peace nor truce shall be made, but by the mutual consent of all the confederates; nor shall any at any time be made, whilst the second grand-son of the most Christian king, by the dauphin or any other prince of the line of France, continued in Spain.' And whereas, to give the greatest strength that was possible to the union so necessary to both nations, her late majesty and the States, by a treaty in the month of June, 1703, renewed and confirmed all treaties and alliances then subsisting between them; and, to the end a just and reasonable peace might the better be obtained, that might establish the repose and tranquillity of Europe, it was agreed, that neither of the said allies should make a suspension of arms or a peace with France or Spain, but in conjunction and by common consent. And whereas the said war was for several years carried on with vigour and unanimity, at a vast expence of blood and treasure: for the support of which, on the part of Great Britain, many millions were granted by parliament, who, on many occasions, expressed their sense of the justice of it, and frequently gave their humble advice to the throne, 'That no peace could be safe, honourable, or lasting, so long as Spain and the West Indies continued in any branch of the House of Bourbon.' And whereas the just cause of her majesty and her allies, in defence of the common liberty, and in vindication of the honour of the crown of Great Britain, was favoured by the Divine Providence with unparalleled successes and signal victories, whereby, as well as by the wisdom and unanimity of their councils, the reputation of the confederate arms was highly advanced, and Great Britain was esteemed the guardian of the liberties of Europe. And whereas, from the prosperous condition of the affairs of the allies, nothing remained, in all human appearance, but that they should reap the fruits of all their victories, in a speedy, just, honourable, and lasting peace; and on the other hand nothing was left to raise the hopes of the enemy, whereby to defeat that happy prospect, but his secret endeavours to disunite the confederacy. And whereas divers evil-minded

persons, enemies to the true interests of their own country as well as to the common liberties and welfare of Europe, having, by many wicked arts and base insinuations, obtained access to her late majesty queen Anne, and being admitted into her councils and into places of the highest trust, and having formed a wicked and treacherous correspondence with the emissaries of France, and set on foot a private and destructive negociation of peace, thereby intending to weaken and dissolve the confederacy, which had so long and happily subsisted, between her majesty and her good and faithful allies, to the honour and safety of the nation; had prevailed upon her said late majesty, for that purpose, to declare her resolution of entering into a Treaty of Peace with the common enemy, against the consent and opinion of all her majesty's allies; and also to appoint John then lord bishop of Bristol, and Thomas earl of Strafford her plenipotentiaries, to transact the same at Utrecht. And whereas her sacred majesty, in pursuance of the treaties she stood engaged in, and of her declaration in the month of April, 1711, to the Grand Pensionary and the other ministers of Holland, being still determined, in making peace as in making war, to act in perfect concert with her allies, and, in conjunction with them, to demand and procure from France a just satisfaction for all their pretensions, according to, and in performance of, the many solemn treaties and alliances then subsisting between her majesty and them, did, in pursuance thereof, by her instructions under the sign manual, dated the 21st of October, 1711, to him the said Thomas earl of Strafford, her ambassador extraordinary and plenipotentiary to the States General, direct him, 'That, during the course 'of the then intended negociation of peace, it 'must be the most careful endeavour and the 'fixed principle of all the confederates, to hold 'fast together, in order to obtain from the 'enemy the utmost which could be hoped for in 'the present circumstances of affairs; and that 'he might assure the confederates, that her majesty on her part would firmly adhere to that 'rule; and that she was so far from making 'peace without the concurrence of the States 'General, that she had declared her firm resolution, not to make it without their satisfaction;' And also by her instructions under the sign manual to the said then bishop of Bristol, and him the said Thomas earl of Strafford, her plenipotentiaries, to treat of a good and general peace, her said majesty, amongst other things, did direct them, 'Upon their arrival at Utrecht, 'to concert with the ministers of the allies, in 'what manner it might be most proper to open 'the conferences, and what method to observe 'in the progress of the treaty; upon that and 'all other occasions, earnestly to represent to 'those ministers the great importance of appearing united; and, for that reason, to recommend to them, that, if any difference or 'dispute should arise, the same should be accommodated amongst themselves, that France 'might have no hold to break in upon them; 'but, on the contrary, whenever they meet the 'enemies' ministers in the Congress, every 'opinion that is delivered, and every instance 'that is made, may be backed by the concurrent force of the whole confederacy: that if 'it should be thought proper to begin by the 'disposition of the Spanish monarchy, they 'were to insist, that the security and reasonable 'satisfaction, which the allies expected, and 'which his most Christian majesty had promised, could not be obtained, if Spain and 'the West Indies be allotted to any branch of 'the House of Bourbon.' Notwithstanding all which premises;

ARTICLE I.

"He, the said Thomas earl of Strafford, being of her majesty's privy council, and her ambassador extraordinary to the States General, and appointed one of her plenipotentiaries to treat with the ministers of France, of a good and general peace, in concert with the ministers of her majesty's allies, who for that purpose were assembled at Utrecht, with those of France, with full powers to transact the same: having no regard to the true ends of his said commissions and powers, to the honour or safety of her majesty or her kingdoms, to the many solemn engagements she was under to the old and faithful allies of this nation, or to the common liberties of Europe; but being devoted to the interest and service of the French king, the then common enemy, in defiance of the tenor of the several treaties before-mentioned, or some of them, as well as of the frequent advices of parliament, and the many declarations of her majesty from the throne; but more particularly in defiance of the solemn and mutual assurances which had been so lately renewed between her majesty and the States-General, to act in perfect concert with each other, in making peace as in making war, and of the several instructions from her majesty under the sign manual to him the said Earl in pursuance thereof; was not only wanting in his duty and trust to her majesty, by not advising against, and as far as was in his power, by not opposing, the going into any private separate negociation with France; but, on the contrary, when a separate, dishonourable, and destructive negociation of peace was entered into, between the ministers of Great Britain and France, without any communication thereof to her majesty's allies, according to the several treaties; he the said Earl did not only take upon himself, and presume from time to time, to advise and exhort that the same should be continued and carried; but did likewise frequently concert private and separate measures with the ministers of France, in order to impose upon and deceive her majesty's good subjects and her allies, and was instrumental in promoting the said separate negociation, exclusive of all the allies, and to their manifest prejudice and detriment. And further he the said Earl, when the ministers of France, at Utrecht, refused to answer in

writing, and on many other occasions, proceeded in a fallacious and unjustifiable manner, in transacting the negociations of peace; was not only wanting in his duty, in not representing to her majesty and her ministers against the same, and in not supporting in the manner he ought to have done, her majesty's good allies in their reasonable demands from France; but, on the contrary, commended the French prudence in taking such measures; and even suggested himself the methods for France to make use of, to create dissentions amongst the allies, and separate negociations between each of the allies and France, thereby to dissolve the whole confederacy. By which wicked and treacherous practices, he the said Earl prostituted the honour of her majesty and the imperial crown of these realms, and grossly violated his powers and instructions, the many treaties which her majesty then stood engaged in to her allies, and the repeated assurances which the said Earl had, by her majesty's order and in her name, given to the said allies, to act in perfect concert with them throughout the whole negociations of peace: thereby rendering the design of the confederacy, and the mutual support expected from the same, altogether useless, and giving up the affairs of Europe into the hands of France.

ARTICLE II.

"Whereas the maintaining a perfect union and good correspondence between her late majesty and the illustrious House of Hanover was of the utmost importance, for preserving to these kingdoms the invaluable blessings of their religion and civil liberties, by securing the succession to the crown, to a race of Protestant princes, ever renowned for their great justice and clemency, and thereby defeating the traitorous designs of the Pretender; and, for that purpose, the great wisdom of divers parliaments, which had fixed and confirmed the said succession, had also laid the obligation of an oath upon the subjects of these realms, to support and maintain the same to the utmost of their power: he the said Thomas earl of Strafford, not regarding the many ill consequences to her majesty and these kingdoms, which would naturally ensue from a disunion or coolness of affection between princes so nearly allied in blood and interest, instead of doing what in him lay to prevent the same, did, on the contrary, in his letters from Holland to her majesty's ministers of state in Great Britain, by divers false representations and scurrilous reflections upon his present most gracious majesty, then elector of Hanover, endeavour to alienate her majesty's affections from his said electoral highness, and to create or widen fatal differences or misunderstandings between them: and when, by the wicked and pernicious advice of him the said Thomas earl of Strafford and divers other evil counsellors, her late majesty was at last prevailed upon to make a fatal cessation of arms with the then common enemy, without any concert with his said electoral highness, and against the consent, and contrary to the most earnest representations, of all her allies; for the execution of which, he the said Earl was sent over to the army in the Netherlands, where the generals* of the auxiliaries paid by her majesty, whose honour and consciences would not permit them to abandon the confederates, and leave them as a sacrifice to France, refused to withdraw with the duke of Ormond, without particular orders from their respective masters; which proceedings of the confederate generals being wickedly represented by the said evil counsellors, in conjunction with the ministers and emissaries of France, as an indignity offered to her sacred majesty; he the said Thomas earl of Strafford, to create uneasiness and dissension between her late majesty, and his then electoral highness, did, by his letter, on or about the 17th of July, 1712, to her majesty's then secretary of state, maliciously and wickedly suggest and affirm, 'that the said separation 'of the confederate generals from the duke of 'Ormond ought to be imputed to his said elec-'toral highness.' And further, he the said Earl, by frequently affirming, and sometimes in the most solemn manner, to the ministers of his said electoral highness as well as others, the most notorious and manifest untruths, contrary to the intentions and interests of her majesty, and vainly intending thereby to deceive and impose upon his said electoral highness and the rest of her majesty's good and faithful allies in matters of the highest importance; and particularly, by solemnly affirming, on or about the 16th of July, 1712, to Monsieur Buleau, general of the Hanover forces, and the rest of the confederate generals, that 'her majesty had made 'no truce with France;' whereas he the said Earl then well knew the same was made and concluded several weeks before; did thereby, as well as by all the before mentioned proceedings, not only prostitute and dishonour the high characters he was then invested with, but, as far as in him lay, did dissolve the mutual confidence and good understanding so necessary to be maintained between her said late majesty and the illustrious House of Hanover, for the safety and prosperity of Great Britain, and the common liberty of Europe.

ARTICLE III.

"Whereas, in the pernicious negociations of peace carried on by him the said Earl and other evil counsellors with the ministers of France, the French king had proposed to acknowledge her majesty's title to the crown of these realms, and the Protestant Succession in the illustrious House of Hanover, when the peace should be signed between Great Britain and France, and not before: whereupon the House of Lords, by an humble Address to her majesty, on the 15th of February, 1711, begged leave to represent their just indignation at that dishonourable treatment of her majesty; as also their utmost resentment at the terms of peace offered to her majesty and her allies by the plenipotentiaries

* Origin. General.

of France; for which addresses her majesty was pleased to return them her hearty thanks, for the zeal they had therein expressed for her honour; he the said Earl was not only wanting in his duty to her majesty, and zeal for the Protestant Succession, in not advising her majesty against treating with France upon such dishonourable terms; but did himself, with other evil counsellors, privately, wickedly, and treacherously, concert and agree with the ministers of France, that the said proposals, so derogatory to the dignity of her majesty, and dangerous to these kingdoms, should be the conditions upon which France would agree to treat of a peace with Great Britain. And further, he the said Earl, in contempt and defiance of the judgment of the House of Peers, which had received her majesty's gracious approbation, and acting the part of an emissary of France, instead of a plenipotentiary of Great Britain, being thereunto encouraged, and founding his presumption on a letter to the then said bishop of Bristol and him the said Earl, from Henry St. John, esq. then principal secretary of state, on the 16th of February, 1711, the next day after the said Address of the House of Peers was made, and informing them of the indignation expressed in Great Britain at the offers of France, but that by the management of master Thomas Harley (then secretary of the treasury) the House of Commons was perfectly and absolutely secured to the measures of peace; did wickedly, deceitfully and perfidiously, concert and agree with the ministers of France, at Utrecht, that the said French ministers should write a collusive letter to him the said Earl and the then said bishop of Bristol, wherein her majesty should be stiled queen of Great Britain; which letter was not to be made any use of at Utrecht, or taken as an acknowledgment by France of her majesty's title to the crown: but it was agreed to be transmitted to Great Britain, thereby to deceive and impose upon her majesty and the parliament, as if France had then actually acknowledged the same: which said letter was accordingly written by the ministers of France, and transmitted to Great Britain by him the said Earl; whereby her majesty, the parliament, and the whole nation were most grossly and scandalously abused, and drawn in to the said destructive measures of peace, to the great dishonour of her majesty and these kingdoms, and to the apparent danger of the Protestant Succession.

ARTICLE IV.

"That he the said Thomas earl of Strafford, in defiance of the many treaties between her majesty and her allies, for the recovery of the monarchy of Spain to the House of Austria, thereby to preserve a due balance of power in Europe; and in contempt of the advice and opinion of parliament, 'That no peace could 'be safe, honourable, or lasting, so long as 'Spain and the West Indies continued in any 'branch of the House of Bourbon;' and also in direct violation of her majesty's instructions, of the 23rd of December, 1711, in pursuance thereof; whereby he the said Earl was expressly commanded, 'To insist in the confe-'rences of peace, with the ministers of France, 'that the security and reasonable satisfaction 'which the allies expected, and which his most 'Christian majesty had promised to grant, 'could not be obtained if Spain and the West 'Indies be allotted to any branch of that House:' did not only presume to treat about the peace with the ministers of France, without insisting, as he ought to have done, that Spain and the West Indies should not be allotted to the said House of Bourbon; but also, when the ministers of his imperial majesty and of the king of Portugal, in conformity to the mutual obligations and treaties between her majesty and them and with each other, demanded of France, 'That Spain and the West Indies 'should be restored to the House of Austria;' and requested him the said Earl, 'to join with 'them, to strengthen that demand,' did decline and refuse to do the same; by which perfidious and unwarrantable practices of him the said Thomas earl of Strafford, incurable jealousies and discords were created between her majesty and her allies; that mutual confidence, which had so long and so successfully been cultivated between them, and which was so necessary for their common safety, was absolutely dissolved, the just balance of power in Europe was wickedly betrayed; and apparent advantages were given to the common enemy, to impose what terms of peace he should think fit upon her majesty and the whole confederacy.

ARTICLE V.

"Whereas her late majesty, on the 7th of December, 1711, having earnestly recommended from the throne, 'That provision might be 'made for an early campaign, in order to carry 'on the war with vigour, and as the best way 'to render the Treaty of Peace effectual; and accordingly supplies were granted, and magazines provided at a great expence; and in pursuance thereof, her majesty having given early assurances to her allies of her sincere intentions, and likewise expressly instructed her general the duke of Ormond, not only to renew the same assurances, and declare her resolution of pushing on the war with the utmost vigour, but to concert with the generals of the allies the proper measures for entering upon action; which assurances were accordingly given by the said duke, and the confederate army was thereupon ordered to be assembled, which at that time was the strongest that had been in the service during the whole course of the war, and greatly superior to that of the enemy; notwithstanding which premises, he the said Thomas earl of Strafford, then of her majesty's privy council, being informed of the reasonable prospect, which, by the blessing of God, the army of the confederates then had, of gaining new conquests over the army of France; in

order to disappoint the expectations of the allies, and to give success to the secret and wicked negociations then carrying on by himself and other evil counsellors with the ministers of France; on divers very false and groundless suggestions and allegations, and in violation of many treaties then subsisting between her majesty and the States General, as well as several other princes, at several times, and particularly by his letter of the 30th of April, 1712, to Henry viscount Bolingbroke, then Henry St. John, esq. one of her majesty's principal secretaries of state, did wickedly and treacherously suggest and advise, that a cessation of arms should be made with France, by her majesty, without and even against the consent of her good allies and confederates: in pursuance of which wicked counsels and advices, directions were afterwards privately sent, in her majesty's name, to the duke of Ormond, in Flanders, to avoid engaging in any siege, or hazarding a battle, till further orders, although nothing had been then settled in the said private negociations for the interest and security of Great Britain. And further, he the said Thomas earl of Strafford, at that time also of her majesty's privy council, did advise her late majesty that he himself should be sent, and accordingly he was afterwards sent, from England, to the army under the duke of Ormond in Flanders, with directions, in her majesty's name, to cause a cessation of arms to be made and proclaimed between her majesty's and the French army, and a separation to be made by the troops of Great Britain from the confederate army; which were accordingly performed and executed, by the advice and direction of him the said Earl, without the consent, and contrary to the earnest representations of her majesty's confederates, and in open violation and defiance of the many treaties then subsisting between her majesty and her good and faithful allies: by which wicked and perfidious counsels and practices of him the said Thomas earl of Strafford, the progress of the victorious arms of the confederates was stopped, and a most favourable opportunity lost for conquering the enemy; all hopes of confidence between her majesty and her allies were entirely destroyed, and the French king made absolute master of the negociations of peace.

ARTICLE VI.

"That he the said Thomas earl of Strafford having, in concert with other false and evil counsellors, wickedly advised and procured the said fatal cessation of arms, and likewise obtained for France the separation of the troops of Great Britain from the confederate army; in further execution of his treacherous purposes, to advance and promote the interests of France; and being determined, as far as in him lay, not only to render all future correspondence and good harmony between her majesty and the States General utterly impracticable; but designing, by all possible means, to weaken and distress the said States, in order to bring them under an absolute necessity of complying and submitting to the measures of France; and well knowing that taking possession of Ghent and Bruges was the readiest means of effecting the same; did wickedly and treacherously advise that a party of the queen's troops should be sent to march through some of the towns belonging to the States General; in hopes, that the commanders of the said towns, incensed by such unjust and unnecessary provocations, and through the apprehensions of the ill consequences that such attempts and proceedings might subject them to, would be induced to refuse them admittance, and thereby give a pretence for putting in execution the perfidious designs and resolutions which had been concerted by him the said Earl, and other evil counsellors, with the ministers of France: in pursuance of which wicked advice, a party of her majesty's troops was accordingly sent with orders to march through some of the fortified towns belonging to the States General; and on pretence of their being denied passage through the same, the said treacherous and destructive design was immediately put in execution, and Ghent and Bruges were seized upon by the troops of Great Britain; whereby, all means of communication between Holland and the confederate army being entirely cut off, or put into the hands of those who had so lately and shamefully betrayed the common cause, apparent advantages and encouragement were given to the French army, and her majesty's good and faithful allies were deterred from forming or prosecuting any designs against the common enemy; since the same could not be put in execution without their knowledge and consent, who, on many occasions, had given the most evident proofs of their disaffection to the confederates, and of their firm adherence to the interests of France. All which crimes and misdemeanors were committed and done by him the said Earl, against our late sovereign lady the queen, her crown and dignity, the peace and interest of this kingdom, and in breach of the several trusts reposed in him the said Earl; and he the said earl of Strafford was of her late majesty's privy council, her ambassador extraordinary to the States General, and one of her plenipotentiaries, to treat of a good and general peace with France, during the time that all and every the crimes before set forth were done and committed."

To which the House agreed; and, on the next day, the following Clause was added:

"And the said knights, citizens, and burgesses, by protestation, saving to themselves the liberty of exhibiting, at any time hereafter, any other accusation, or impeachment, against the said Thomas earl of Strafford; and also of replying to the Answer that the said Thomas earl of Strafford shall make unto the said Articles, or any of them, or of offering proof of the premises, or any other impeachments or accusations, that shall be exhibited by them, as the

case shall, according to the course of parliament, require; do pray, that the said Thomas earl of Strafford be put to answer the said crimes and misdemeanors, and receive such condign punishment as the same shall deserve; and that such proceedings, examinations, trials and judgments, may be, upon every of them, had and used, as are agreeable to law and justice."

The Articles were delivered to the Lords on the 1st of September; on which occasion lord Strafford made a long speech of complaint, and after debate, obtained (besides permission to take a copy of the Articles and a month's time for putting in his Answer) leave to cause to be taken copies of all Journals of Parliament, of the public treaties referred to in any of the Articles exhibited against him, or the preamble thereof, of all other records whatsoever, and also of all such papers as were delivered up by the said Earl, which are, or whereof any copies now are in the secretary's office, or in the hands of any of the clerks of the privy council.

Farther time being afterwards given to him to put in his Answer, he did not put in the same till parliament, which had been prorogued, re-assembled for dispatch of business.

Jan. 9, 1715-16. Lord Strafford delivered in to the House of Lords the following Answer:

THE ANSWER OF THOMAS EARL OF STRAFFORD TO THE ARTICLES EXHIBITED BY THE KNIGHTS, CITIZENS, AND BURGESSES, IN PARLIAMENT ASSEMBLED, IN THE NAME OF THEMSELVES, AND OF ALL THE COMMONS OF GREAT BRITAIN, IN MAINTENANCE OF THE IMPEACHMENT AGAINST HIM FOR HIGH CRIMES AND MISDEMEANORS SUPPOSED TO HAVE BEEN BY HIM COMMITTED.

The said Earl, saving to himself all advantages of exception to the said Articles for the uncertainty and insufficiency thereof, and of not being prejudiced by any words, or want of form, in this his Answer; and also saving to himself all rights and privileges belonging to him as one of the peers of this realm; in answer to the said Articles, admits, That divers treaties and alliances were entered into by the crown of Great Britain with the several potentates mentioned in the preamble to the said Articles; but, for more certainty as to the contents thereof, the said Earl refers to the said treaties themselves; and, with the utmost deference to the memory of his late royal master king William the third, doth acknowlege the great wisdom of that glorious prince, who, by the Grand Alliance, formed a noble design of settling a due balance of power in Europe; but humbly begs leave to observe, That the affront offered by France, in acknowledging the Pretender king of Great Britain, though justly mentioned by her late majesty queen Anne, of ever-blessed memory, as one cause of the war, which, in May, 1702, was by her declared against France and Spain, could not be any inducement to the forming the Grand Alliance, as is suggested in the preamble to the said Articles; being subsequent to it, as most evidently appears; inasmuch as that alliance was not only formed, but concluded and signed at the Hague, during the life time of the late king James the second: And the said Earl admits, that the emperor, and the States General, did also, about May, 1702, declare war against France and Spain; and that other kings, princes, and states, of Europe, soon after became parties to the said confederate war; which having been carried on, for many years, at a vast expence of blood and treasure, her said late majesty, out of her tender regard for the good of her people, and from a sincere and real design to prevent the further effusion of blood, and to ease her subjects from the heavy burden of taxes, which they had so long endured, did hearken to overtures of peace from France, after former negociations had been rendered fruitless, and give instructions to the then lord privy seal, now bishop of London, and him the said Earl, to treat thereof at Utrecht, in conjunction with the ministers of her allies, in order to bring the same to an happy conclusion; and, among such instructions, several clauses were interspersed to the effect in the said preamble set forth; but, for more certainty, refers to his original instructions; which, together with all his other papers relating to his negociations in the Low Countries, were taken from him in the beginning of January last, and, he supposes, may continue in the hands of one of his majesty's principal secretaries of state: But the said Earl is totally ignorant of any treacherous correspondence with the emissaries of France, or of any private or destructive negociation of peace set on foot with the intent to weaken, or dissolve, the confederacy between her said late majesty and her allies: and, for particular Answer to the several matters wherewith he stands charged in the first Article, the said Earl saith, that, having been employed by his late majesty king William in the army, during his whole reign, and likewise in his court for several years next before his death, and having also had the honour to be sent as his majesty's minister to the king of Prussia, he was so happy as to reconcile some differences which had lately arisen, between those two princes; and, upon his return, received his royal master's approbation; her late majesty queen Anne, soon after her accession to the throne, was pleased to command him to leave his post in the army, and to go again to the said court of Prussia, in the year 1702, where he had the character of her ambassador extraordinary; and continued in that quality till April, 1711; at which time her majesty thought fit to appoint him her ambassador extraordinary and plenipotentiary to

the States General; and in June following, her majesty was pleased to honour him with the title of one of her privy council; and, about December, in the same year, to appoint him one of her plenipotentiaries to treat at Utrecht, with the ministers of France, of a general peace: and the said Earl thought it his duty not to scruple any danger or pains for her service; believing his zeal therein was the best evidence he could give of his hearty affection to his country; and he constantly did, with the utmost sincerity, endeavour, according to his abilities, to pursue the true ends of his commissions and powers; to promote the honour and safety of her majesty, and her kingdoms; to answer the engagements she was under to her allies; and to secure the common liberties of Europe: But he must with the utmost detestation and abhorrence, deny, that he was in the least devoted to the interest or service of the French king; or that he ever acted in defiance of any of the said treaties, or of the advice of parliament; or of any declarations of her majesty from the throne; or of her assurances to the States General, to act in concert with them in making peace, as in making war; or of her instructions to him under her sign manual: the said Earl admits, that as he was a privy-counsellor, it was his duty truly to have advised her majesty in all matters treated of in council, whilst he was present; and had any thing, so treated of, appeared to him to have been to the dishonour of her majesty, or to the prejudice of her people, the said Earl would not have been wanting to advise against, and, with all humility, to oppose the same: but, as he was her majesty's ambassador and plenipotentiary, he looked upon himself as a ministerial officer, whose duty it was to pursue such instructions as he should, from time to time, receive; and since he could not doubt, but that all orders, sent him by her majesty's directions, had been first maturely weighed and digested, he humbly apprehends, your lordships will think it had been too great a presumption in him, to advise against, or oppose, such orders, which carried not in themselves any apparent illegality, when he knew not the springs or reasons of them; and which, therefore, it became him to believe well warranted, and to have proceeded from just and proper grounds and motives: and the said Earl saith, he was so far from advising or exhorting, that any private, separate, dishonourable, or destructive, negociation of peace should be continued, and carried on, between the ministers of Great Britain and France, without communication thereof to her majesty's allies, according to their treaties; or from being instrumental in promoting any such negociation, as in the said Article is charged; that he did not know, or believe, that any such negociation was entered into: and for a plain relation of the said Earl's proceeding in this affair, he saith, that about May, 1711, being then her majesty's ambassador and plenipotentiary to the States General, he received, from one of her principal secretaries of state, a paper supposed to be signed by monsieur Torcy, containing some proposals for setting on foot a negociation of peace, with orders to communicate the same to the Pensionary of Holland, that his sentiments might be known thereupon; and to assure that minister, and others of that republic, that the queen was resolved in making peace, as in making war, to act in concert with the States: in pursuance of which orders, he the said Earl did immediately communicate the said proposals to the Pensionary, and unto two others of the States General, who had formerly been employed in the negociations at Gertruydenberg, and whom the Pensionary thought the most proper to be entrusted with that matter; and they having considered the said proposals, did pray the said Earl to return her majesty thanks, in the name of the States, for her confidence in them; declared themselves weary of the war, and ready to join in any measures her majesty should think proper for obtaining a good peace; and that they hoped her majesty would bring the French to explain more particularly the several points contained in the above-mentioned proposals: of this the said Earl sent an account to her majesty's secretary of state; and, soon after, received her commands to repair to England; and on his arrival here, acquainted her majesty with his proceedings at the Hague; but being, by her gracious permission, allowed to follow some private affairs of his own, he was often in the country, and so much engaged, that he did not know of any of the transactions with monsieur Messager, or what was done in relation to the explications the States had desired her majesty to procure from France, upon the points of monsieur Torcy's proposal, till, in October following, he received instructions, dated the first of that month; whereby he was required to return to Holland, and to communicate to the States some propositions, which had been signed by the said monsieur Messager, the 27th day of September before, as a foundation for opening the conferences of peace with France; which he supposes to be the instructions intended by those mentioned in the preamble to the Articles, as dated the 21st day of October; none of that date appearing amongst the copies of his own papers he has been permitted to take: but the said Earl never saw monsieur Messager till he met him at Utrecht, in January, 1711-12; nor, during all the time of the said minister's stay in England, was in the least privy to, or made acquainted with, any transaction between him and any of the queen's ministers: the said Earl, having received his said instructions, took his journey for Holland; and on his arrival there, in pursuance thereof, imparted to the States General the said propositions, and what had been communicated to him concerning any transactions between Great Britain and France; and at the same time, in further pursuance of his said instructions, declared to them, That if they did not think those propositions a sufficient ground to open the con-

ferences, but were desirous to carry on the war, her majesty was willing to concur with them; but could no longer bear that disproportionable burden which had been yearly increased on her subjects; nor that deficiency her allies had been guilty of in every part of the war; and that therefore it was incumbent on them, if the war continued, to furnish such quotas of ships and forces, for the future, as they had to that time been wanting in: that this was what her majesty thought she might justly insist on, that they should comply with her in war, or in peace; since in the former, she required nothing but what it belonged to them to perform, and what was necessary to the success of their arms; and since, in the latter, she had done, and would continue to do, what was in her power towards obtaining such a peace as might be to the satisfaction of her allies: soon after this, the States General sent monsieur Buys to England, as their plenipotentiary, to confer with her late majesty's ministers, and inform himself of the circumstances of affairs, and make report thereof to his masters; who having continued here some time, and transmitted to Holland an account of the posture of affairs, the States General consented to open the conferences for peace, and to invite the other allies to send their ministers to Utrecht, the place agreed on for that purpose; and in order thereunto, granted passports for the French ministers to repair thither: and the said Earl is informed, that, amongst other transactions by the said monsieur Buys, whilst in England, he signed a Treaty with her late majesty's ministers, who were empowered for that purpose, dated the 18th day of December, 1711, O. S. for the carrying on the war, and the negociation of peace, according to the mutual engagements of former treaties between England and Holland; which Treaty was ratified by her said late majesty the day after it was signed, and was sent to Holland by the then lord privy seal; but the States General, though their ministers were often called upon, never ratified the same: and the said Earl admits, that the said lord privy seal, and himself, were appointed to be her majesty's plenipotentiaries at the said congress at Utrecht; and he can, with great truth, affirm, that he acted, on all occasions, with the highest and most disinterested zeal, for procuring a general peace, for the mutual advantage of her majesty's subjects and allies, in pursuance of the powers and instructions received for that purpose; and is firmly persuaded his colleague did the same: the said Earl saith, that every one of the confederates had their ministers at Utrecht, who all agreed in the method and manner of proceeding in the said negociation; and had frequent meetings and conferences to that end, among themselves, in order to lay down a general scheme for their conduct; and for the better concerting these measures, it was thought fit to have two conferences a week with all the allies, two with the Dutch apart, and two with all the allies with the French; and in those with the Dutch and the other allies, what was to be proposed on the part of the allies to the French was always previously settled: in the first general conference with the French ministers, they offered either to proceed to the explanation of the general points signed by monsieur Mesnager (which they acknowledged were binding only to France, and not to the allies,) or that each of the allies should make their demands: on deliberation, it was insisted by the allies, That the French should first give in a specific plan of the offers of the king their master to all and each of the allies; and the French complied to give in such specific plan, in case the allies would promise to return an answer thereto, containing their several demands; and accordingly, the French ministers did give in such plan, in writing; and the allies, in answer, delivered in their demands, also in writing: the French, having thus given in their concessions in writing, and received the demands of the allies in like manner, thought fit to propose the entering into debate upon the several propositions mutually delivered in, agreeably to the course of proceeding in former treaties: but though some of the allies thought there was no necessity of insisting very much on any further written answer; yet others pressed it more vehemently. To which the French replied, That both sides having already explained themselves in writing, it was agreeable to the method of all negociations to proceed to debate matters; and, in such debates, specific answers to each demand of the allies would occur; and all the allies agreed in this principle, That the method most expeditious and safe, whether by writing or otherwise, was fittest to be followed. Thus having given your lordships a short narrative of the proceedings, which might render his Answer to the several particulars charged in this Article more intelligible: as to that part which mentions his frequently concerting private and separate measures with the ministers of France, the said Earl doth acknowledge, that when the settling any particular interest of Great Britain might require it, he and his colleague might confer with the ministers of France, in the same manner as the ministers of each of the allies conferred separately with those of France, touching their respective particular interests; and the said Earl apprehends, they were justified therein by their express orders from England for that purpose; and sometimes the said bishop and Earl had separate conferences with the ministers of France, at the request, and on the behalf, of one or other of the allies, whose regard to her majesty made them often desire the interposition of her ministers, to support their several pretensions; wherein the zeal and sincere endeavours of the said bishop and Earl, for the interest of the allies, always appeared to the satisfaction of those on whose behalf they acted: but he denies, that he did concert any private or separate measures with the ministers of France, in order to impose upon, or deceive, her majesty's subjects or allies, or tending to their prejudice or detriment: and as

to that part which charges him with commending the prudence of the French ministers, in refusing to answer in writing, the said Earl saith, that after the written propositions and demands on each side had been delivered in, he took it to be a matter, in its own nature, indifferent, whether there should be any further transaction thereupon in writing, or not; and whether it were better to proceed by way of writing, or by conference, to adjust and settle the terms of peace upon the respective offers and demands which had been so given in: there was variety of opinions: many of the ministers of the allies declared it to be the most usual and expeditious method to proceed by way of conference; which, they thought, gave better opportunities of considering and explaining matters; there being usually seen a greater stiffness and obstinacy in maintaining what is once put down in writing; which oftentimes renders negociations tedious, and sometimes clogs them with insuperable difficulties; and there seemed to be just grounds for suspicion, that some who were most pressing for the method of writing, might have those ends in their view, which it became her majesty's plenipotentiaries, as far as they could, to obviate and prevent: if, therefore, the said Earl inclined, in his private opinion, to the sentiments of those who thought the way of conference more expeditious, and equally safe; admitting he had been mistaken therein, he hopes it will not be imputed to him as a crime; much less can he apprehend your lordships will esteem it any evidence of his encouraging the enemy in any fallacious or unjustifiable manner of proceedings, if, in a letter from the Hague to a minister of the queen, before this matter had been fully considered, he intimated the thoughts he then entertained of it; since he takes it to be very proper for a public minister abroad, in his correspondence with the more immediate servants of the crown at home, to give minute and particular accounts of all occurrences and discourses; to lay open his thoughts; to suggest the first motions and suspicions that arise in his mind; and to descant upon things without reserve; in order to receive more plain, full, and express, informations and directions for his better proceeding: and the said Earl believes it will appear, that if in any letter he intimated his thoughts upon that subject, he did not give any positive judgment; but suspended his opinion therein till he should have opportunity of further considering it: and he saith, that when afterwards the matter came to be more maturely debated among the ministers of the allies, upon his return to Utrecht, he did join in pressing the ministers of France to give a further answer in writing: and as to that part which chargeth the said Earl with suggesting methods for France to make use of to create dissensions among the allies, and procure separate negociations between each of the allies and France; he saith, that it was generally thought most proper, that the respective demands of the allies, which were sometimes clashing, and contradictory to each other, should be considered apart, and not at general conferences with the French; which seemed the more requisite, since no prince or state had undertaken the part of a mediator, to reconcile the differences which might happen to rise among them, as has been usual in former treaties: If therefore, in a letter to a minister of the queen, from the consideration of the possibility that some might be for the contrary method, he intimated, that the inconvenience of such a method would best appear by beginning in the congress to argue on some demand of one of the allies; which would probably induce such ally to propose the debating separately; he hopes this can never be construed the suggesting a method for France to make use of to create dissensions among the allies, or which could have any tendency to dissolve the confederacy; it seeming rather to him a likely means to prevent any such unhappy consequence: sure he is, that he sincerely laboured to prevent it; and, for that end, employed his utmost endeavours to obviate and discourage any fallacious or unjustifiable manner of transacting the negociation of peace: and he denies, that he did, at any time, suggest any method whatsoever for France to make use of to create dissensions among the allies, or separate negociations between any of the allies and France, thereby to dissolve the confederacy; and as he constantly opposed what he apprehended or suspected, to have any such tendency, so he never failed to support, in the best manner he could, her majesty's allies in their demands against France: and denies, that in the course of the negociation he was guilty of any treacherous proceeding, or of any practices whatsoever, whereby he could prostitute the honour of the queen, or the imperial crown of these realms; or whereby he did violate his powers or instructions; the treaties her majesty stood engaged in to her allies; or any assurances he had given them by her order, or in her name; or whereby the design of the confederacy, or the support expected from it, were rendered useless; or the affairs of Europe given up into the hands of France.

In Answer to the Second Article; the said Earl saith, he always thought an union and good correspondence between her late majesty and the illustrious House of Hanover of the utmost importance; and therefore used his best endeavours to continue and improve it; and never had the least design to create or widen any differences or misunderstandings between them: he acknowledges, that the parliament, with great wisdom, provided laws for preserving the Protestant Religion; establishing the Protestant Succession; and laying the obligation of an oath on the subjects of these realms to maintain the same: and the said Earl humbly hopes, that he, in his station, hath never been wanting in his faithful endeavours for the security thereof; and to his great honour, he hath frequently received from her late electoral highness the princess Sophia, and from his present majesty, their approbation of his zeal

for their service: and he does, with great pleasure and satisfaction reflect on the happy success of his endeavours in the late Treaty of Peace at Utrecht, by which France and Spain were brought to acknowledge our present sovereign's right of succession to the imperial crown of these realms, and to engage never to oppose or disturb the same, directly or indirectly; whereby his majesty had a peaceable accession to the throne; and the benefit of the several laws made in support of the said succession will more securely be transmitted to posterity: the said Earl denies, that he, by false representations, or by any reflections upon his majesty when elector of Hanover, in any letter to the late queen's ministers, or otherwise did endeavour to alienate her majesty's affections from his electoral highness: and saith that to such a general charge it is impossible to make any particular answer and defence; but the said Earl is firmly persuaded, there is not any expression in any letter by him wrote, that carries the appearance of any such false representation or reflection; such expressions being as remote from his heart and intentions, as they are inconsistent with that respect to the illustrious House of Hanover, which, by the whole tenour of his actions, he hath endeavoured to demonstrate; and therefore the said Earl hath that assurance of your lordships' justice as to believe, that no doubtful words, or passages, contained in any of his letters, no accounts, or censures, if any such there be, of what was said, or done, by any minister, or servant, of his electoral highness, inconsistent, as he apprehended, with that deference which ought to have been paid to her late majesty, will be taken by your lordships as an evidence of any design to alienate her late majesty's affections from his then electoral highness, or to create, or widen, any differences or misunderstandings between them with which the said Earl is charged in the said Article: and as to the particular reflection, supposed to have been made by the said Earl, in his letter of the 17th day of July, 1712, on his then electoral highness; the said Earl humbly hopes, that your lordships will not interpret any expression in that letter to have been meant of his electoral highness, who is not so much as once named throughout the same, and whom the said Earl hath never mentioned in any letter whatsoever, without the highest respect and veneration; but that your lordships will rather understand it, as it was meant, with respect to the general of the Hanover troops, whose conduct, the said Earl owns, he hath expressed himself, as well in that as in some preceding dispatches, not to have been entirely satisfied with: how far he was right in his opinion, he submits to your lordships' wise determination; but humbly hopes, that no representation thereof by him made, however he may be thought to have been mistaken therein, proceeding only from a sincere zeal for the honour of his royal mistress, and the interest of his country, can be judged criminal: and the said Earl saith, that the late queen was so far from being prevailed on by his advice, to make a cessation of arms with France, without concert with his electoral highness, or against the consent, or representations, of any of the allies, that he can and doth, with truth, affirm, that her majesty's resolutions concerning the said cessation were not taken upon his advice, or with his privity: the said Earl doth admit, that, about June or July, 1712, he was sent to the army, by her majesty's command, with particular instructions touching the said cessation; and that, in pursuance of his said instructions, he discoursed several of the generals of the allies, particularly monsieur Buleau; and that he might, in such discourse, on the 16th day of July, 1712, affirm, as he then thought, that her majesty had made no truce with France; and the said Earl was then of that opinion, the articles demanded by her majesty for a cessation of arms, as the conditions without which no cessation was to be made, not having at that time, to his knowledge or belief, been performed by France: And the said Earl can assuredly say, that he doth not remember he hath, at any time, knowingly affirmed to the ministers of his said electoral highness, or any other of the allies, any untruths, or any thing contrary to the intentions, or interest, of the late queen, thereby to deceive or impose upon his electoral highness, or any of her majesty's allies: and apprehends, that he hath not in any of his negociations or proceedings prostituted or dishonoured the character he was invested with; or done any thing tending to dissolve the mutual confidence and good understanding between her late majesty and the illustrious House of Hanover.

In Answer to the Third Article; the said Earl denies any pernicious negociations of peace to to have been carried on by him with the ministers of France; and saith, that in the paper mentioned in his instructions to be signed by monsieur Mesnager, and delivered to him, together with his said instructions, on or about the 1st day of October, 1711, it is said, the French king will acknowledge the queen of Great Britain in that quality, as also the succession to that crown, according to the present establishment: And, in the specific explanation of the offers of France, delivered the 11th of February following, it is said, the king will acknowledge, at the signing of the peace, the queen of Great Britain in that quality, as well as the succession to the crown, according to the present establishment, and in a manner most agreeable to her Britannic majesty: but the said Earl denies he ever heard, that the French king proposed such acknowledgment should not be before the signing of the peace; nor doth he conceive how the proposal (before the entering into the negociations of peace) indefinitely to acknowledge the queen, and the subsequent concession to do so, at the signing of the peace, in what manner her Britannic majesty should please, doth necessarily infer, that he would not do it sooner; nor are there, in any

of the propositions from the French king, any negative words that he would not do it sooner; as intimated in this Article: and the said Earl apprehends, that, in fact, he did it sooner; for, when the sieur Mesnager came into England, the said Earl is informed, he brought with him a credential letter from the French king; wherein her majesty was stiled and acknowledged queen of Great Britain; and, in the very first offers, and general conferences, at Utrecht, the French ministers named her Britannic majesty in such direct manner, that the ministers of the allies took it for a plain and sufficient agnition; and the French ministers understood it in the same manner, who continued to name her majesty as queen, without reserve, in their discourse and letters to her majesty's plenipotentiaries: and although the said specific explanation may, in some part of it, seem to refer to a future agnition, to prevent the imperial and other ministers of the allies from insisting likewise on a present acknowledgment of the titles of their masters, which might probably have put a stop to the negociation; yet the said earl conceives the agnition of the queen was not thereby the less manifest; and is humbly of opinion, that her majesty was treated with distinguishing marks of respect, inasmuch as those titles were given her throughout the whole course of the negociation; which had not been allowed, on the like occasions, to other princes, till the conclusion of peace. It is well known, the title of his late majesty king William was not acknowledged at Ryswick till that peace was signed; nor was the emperor's, or the king of Prussia's, owned during the late negociations, till the concluding their respective treaties of peace: when, therefore, the said Earl had no instructions to insist upon a more formal acknowledgment, he hopes he cannot be charged with any want of duty to her majesty, or want of zeal for the Protestant Succession, in not advising her majesty against treating with France upon the terms on which she entered into the negociation at Utrecht: the said Earl believes, the House of Lords, conceiving the French king had proposed to acknowledge her majesty's title to these realms no sooner than when the peace should be signed, did by their Address of the 15th day of February, 1711, with a commendable zeal, represent to her late majesty their just indignation at such dishonourable treatment, and express their resentment at such terms of peace offered to her majesty, and her allies, by the plenipotentiaries of France; and it was agreeable to the duty and affection that august assembly always demonstrated towards that excellent princess, to be touched with the least appearance or apprehension of disrespect to her sacred person; and her majesty, being sensible that their Address proceeded from those motives, was pleased to return them her hearty thanks for the zeal they expressed for her honour: and the said Earl admits, that, in a letter from the secretary of state to the then lord privy seal and himself, mention was made of the said Address; and thereupon they gave an account of the steps by them taken on this subject, to the following effect; that, the day after the receipt of that letter, the French plenipotentiaries were told, that the deferring to make a formal agnition of the queen at first having had all the effect intended, it would be proper then to do it more formally, for reasons with which it was needless to acquaint them; otherwise it would be necessary to insert it in the British demands; that they made no other difficulty in it but this, that, having reported to their court how that matter had passed, they ought, in decency, to give account of what was then desired; and said, they doubted not, in ten or twelve days, to give entire satisfaction therein; but, being pressed to do something immediately, they agreed, that, if her majesty's plenipotentiaries would write to them, they would give an answer, whereby the queen should be directly acknowledged; which was accordingly done; and the said Earl believes, that a copy thereof might be transmitted to England; but not the original; and denies, that, to his knowledge, it was a collusive letter; or that there was any agreement between the British and French ministers not to make use of it at Utrecht; or not to have it taken as an acknowledgment by France of the queen's title to the crown; or that the copy of it was transmitted with design to deceive, or impose upon the queen, or parliament; nor doth he know, or believe, it was made use of for any such purpose; but he takes it to have been an actual acknowledgment of the queen's title by France, and a further evidence, that such agnition was not deferred till the signing of the peace, though it was intended to be then made in a more solemn manner: and the said Earl believes, the honourable House of Peers, for whose judgment he ever had the highest veneration and regard, were satisfied in this point; since, by their Address of the 10th of June following, after they had been acquainted, by her majesty's Speech from the throne, with the terms on which a general peace might be had, they thought fit to thank her majesty for her condescension therein; and did express their reliance on her wisdom to finish that great and good work; as the House of Commons also did, by their Address to her majesty, about the same time: and the said Earl is well assured he was not wanting in his zeal and regard for the security of the Protestant Succession; on which head, the British plenipotentiaries, at the very first general conference with the French ministers at Utrecht, pressed their explanation; and they agreed thereunto; and, when the allies delivered their respective demands, the queen's ministers, on their part, insisted in such manner on what related to the security of that Succession, that the princess Sophia was pleased to honour them with a letter of thanks, and to acknowledge their care of the interest of her family: nor were they less careful, at the conclusion of the Treaty, to settle that important point, with the utmost exact-

ness, to the satisfaction of the queen, the court of Hanover, and both Houses of Parliament; and the Articles for that purpose were not only conceived in stronger terms than had been made use of at Ryswick for acknowledging the then settlement of the crown; but, before they were inserted in the Treaty, were communicated to the minister of the elector, and had his approbation; and the manner of that transaction seems sufficiently justified from the happy effects: the said Earl absolutely denies, that he did ever concert or agree with the ministers of France, that any proposals mentioned in the said Article, or any other proposals whatsoever, should be the conditions whereon France should treat of peace with Great Britain; nor doth he know, that the queen, the parliament, or the nation were in any respect abused, or drawn into destructive measures; or that any step was taken on this occasion, whereby dishonour could accrue to her majesty, or these kingdoms, or any danger to the Protestant Succession.

In Answer to the Fourth Article; the said Earl saith, that the bishop of Bristol, and himself, being appointed her majesty's plenipotentiaries, did, soon after their arrival at Utrecht, pursuant to their instructions, begin, by concerting with the ministers of the allies, in what manner it was most proper to open the conferences, and what method was to be observed in the progress of the treaty; and, if it had been thought proper to begin with the disposition of the Spanish monarchy, the said Earl was ready to have insisted, as the said instructions directed him to do in that case; but, upon such concert, it was thought most advisable, and so agreed, by all the ministers of the allies, that each of them should, by a separate instrument, make their respective demands; with a general clause to support each other's just and reasonable pretensions; and this was looked upon as the most proper method, and necessary to avoid that confusion, which would otherwise ensue from the contrariety of the demands of the several allies; it being then known, that many of them did and would insist to have the same thing for themselves, in opposition to each other: The imperial ministers, as well as the rest, acquiesced in that method; and, at a following conference, it was further desired, that there should be added to such general clause the words "in conformity to their alliances;" with which the said bishop and Earl, as well as the rest, most readily complied; and those words were accordingly added to the general clause in each of the allies demands; which seemed to give a general satisfaction; and there was nothing further at that time insisted on. In consequence of this agreement, it was the general expectation, that the demand relating to Spain, and the West-Indies, should be particularly inserted only in the instrument to be given in by the imperial ministers; but, there having been a day long before fixed for delivering in to the French all the demands of the allies, the imperialists, the very night preceding, at a conference proposed, that all the allies should mention Spain, and the West-Indies, likewise, in their several demands: This caused a general surprize; and none but the ministers of Portugal concurred with them: Those of the States, in particular, declared the said dominions ought to be demanded by them, whom it did immediately concern; and that the method things had been put into could not suffer it to be otherwise; but, the next morning, to give content to the imperialists, they yielded to make a verbal declaration among the allies, that they were resolved to make good all their treaties on occasion of this war, as well those that related to Spain, as those made with Portugal, Prussia, Savoy, and others: The British plenipotentiaries, to give the like satisfaction, declared publicly at the conferences the same day, that as her majesty insisted for a just and reasonable satisfaction for all her allies, in conformity to all her alliances, those that might concern Spain, and the Indies, were understood thereby, as well as others that concerned the interest of the rest of the allies; wherewith the Austrian and Portugal ministers seemed satisfied; nor did they request any thing further from the said bishop and Earl on that head; and therefore he humbly apprehends, that in the negociation he neither declined to insist, that Spain, and the West-Indies, should not be allotted to the House of Bourbon, as far as his instructions, directing him to act in concert with the rest of the allies, required; nor refused to join with the imperial and Portugal ministers, or either of them, to strengthen that demand in such manner as was proper; but in this, and all other matters, he pursued, with constancy, the orders, he from time to time, received from her majesty, as the nature and circumstances of things would give leave: And, in case her late majesty found it impracticable to persist in her first designs of gaining Spain, and the West-Indies, from the House of Bourbon, and thought other expedients for preventing the union of the two monarchies of Spain and France might as well answer the ends of her several alliances, and did thereupon enter into other measures for obtaining a general peace, in which her allies concurred; the said Earl hopes, that his conforming himself to the measures, not only prescribed by her majesty, whose minister he was, and whom it was his duty to obey, but also approved by both Houses of Parliament, will not be esteemed an acting in defiance of the treaties between her majesty and her allies; in contempt of the advice, or opinion, of parliament, or in violation of his instructions: And he cannot entertain such diffidence of your lordships' justice and goodness, as to suspect, that his actions, which proceeded from a principle of obedience to his sovereign, and zeal for the public service, should be condemned as perfidious or unwarrantable: And the said Earl denies, that by any of his practices, any jealousies or discords were created between her majesty and her allies: the mutual confidence

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of the propositions from the French king, any negative words that he would not do it sooner; as intimated in this Article: and the said Earl apprehends, that, in fact, he did it sooner; for, when the sieur Mesnager came into England, the said Earl is informed, he brought with him a credential letter from the French king; wherein her majesty was stiled and acknowledged queen of Great Britain; and, in the very first offers, and general conferences, at Utrecht, the French ministers named her Britannic majesty in such direct manner, that the ministers of the allies took it for a plain and sufficient agnition; and the French ministers understood it in the same manner, who continued to name her majesty as queen, without reserve, in their discourse and letters to her majesty's plenipotentiaries: and although the said specific explanation may, in some part of it, seem to refer to a future agnition, to prevent the imperial and other ministers of the allies from insisting likewise on a present acknowledgment of the titles of their masters, which might probably have put a stop to the negociation; yet the said earl conceives the agnition of the queen was not thereby the less manifest; and is humbly of opinion, that her majesty was treated with distinguishing marks of respect, inasmuch as those titles were given her throughout the whole course of the negociation; which had not been allowed, on the like occasions, to other princes, till the conclusion of peace. It is well known, the title of his late majesty king William was not acknowledged at Ryswick till that peace was signed; nor was the emperor's, or the king of Prussia's, owned during the late negociations, till the concluding their respective treaties of peace: when, therefore, the said Earl had no instructions to insist upon a more formal acknowledgment, he hopes he cannot be charged with any want of duty to her majesty, or want of zeal for the Protestant Succession, in not advising her majesty against treating with France upon the terms on which she entered into the negociation at Utrecht: the said Earl believes, the House of Lords, conceiving the French king had proposed to acknowledge her majesty's title to these realms no sooner than when the peace should be signed, did by their Address of the 15th day of February, 1711, with a commendable zeal, represent to her late majesty their just indignation at such dishonourable treatment, and express their resentment at such terms of peace offered to her majesty, and her allies, by the plenipotentiaries of France; and it was agreeable to the duty and affection that august assembly always demonstrated towards that excellent princess, to be touched with the least appearance or apprehension of disrespect to her sacred person; and her majesty, being sensible that their Address proceeded from those motives, was pleased to return them her hearty thanks for the zeal they expressed for her honour: and the said Earl admits, that, in a letter from the secretary of state to the then lord privy seal and himself, mention was made of the said Address; and thereupon they gave an account of the steps by them taken on this subject, to the following effect; that, the day after the receipt of that letter, the French plenipotentiaries were told, that the deferring to make a formal agnition of the queen at first having had all the effect intended, it would be proper then to do it more formally, for reasons with which it was needless to acquaint them; otherwise it would be necessary to insert it in the British demands; that they made no other difficulty in it but this, that, having reported to their court how that matter had passed, they ought, in decency, to give account of what was then desired; and said, they doubted not, in ten or twelve days, to give entire satisfaction therein; but, being pressed to do something immediately, they agreed, that, if her majesty's plenipotentiaries would write to them, they would give an answer, whereby the queen should be directly acknowledged; which was accordingly done; and the said Earl believes, that a copy thereof might be transmitted to England; but not the original; and denies, that, to his knowledge, it was a collusive letter; or that there was any agreement between the British and French ministers not to make use of it at Utrecht; or not to have it taken as an acknowledgment by France of the queen's title to the crown; or that the copy of it was transmitted with design to deceive, or impose upon the queen, or parliament; nor doth he know, or believe, it was made use of for any such purpose; but he takes it to have been an actual acknowledgment of the queen's title by France, and a further evidence, that such agnition was not deferred till the signing of the peace, though it was intended to be then made in a more solemn manner: and the said Earl believes, the honourable House of Peers, for whose judgment he ever had the highest veneration and regard, were satisfied in this point; since, by their Address of the 10th of June following, after they had been acquainted, by her majesty's Speech from the throne, with the terms on which a general peace might be had, they thought fit to thank her majesty for her condescension therein; and did express their reliance on her wisdom to finish that great and good work; as the House of Commons also did, by their Address to her majesty, about the same time: and the said Earl is well assured he was not wanting in his zeal and regard for the security of the Protestant Succession; on which head, the British plenipotentiaries, at the very first general conference with the French ministers at Utrecht, pressed their explanation; and they agreed thereunto; and, when the allies delivered their respective demands, the queen's ministers, on their part, insisted in such manner on what related to the security of that Succession, that the princess Sophia was pleased to honour them with a letter of thanks, and to acknowledge their care of the interest of her family: nor were they less careful, at the conclusion of the Treaty, to settle that important point, with the utmost exact-

ness, to the satisfaction of the queen, the court of Hanover, and both Houses of Parliament; and the Articles for that purpose were not only conceived in stronger terms than had been made use of at Ryswick for acknowledging the then settlement of the crown; but, before they were inserted in the Treaty, were communicated to the minister of the elector, and had his approbation; and the manner of that transaction seems sufficiently justified from the happy effects: the said Earl absolutely denies, that he did ever concert or agree with the ministers of France, that any proposals mentioned in the said Article, or any other proposals whatsoever, should be the conditions whereon France should treat of peace with Great Britain; nor doth he know, that the queen, the parliament, or the nation were in any respect abused, or drawn into destructive measures; or that any step was taken on this occasion, whereby dishonour could accrue to her majesty, or these kingdoms, or any danger to the Protestant Succession.

In Answer to the Fourth Article; the said Earl saith, that the bishop of Bristol, and himself, being appointed her majesty's plenipotentiaries, did, soon after their arrival at Utrecht, pursuant to their instructions, begin, by concerting with the ministers of the allies, in what manner it was most proper to open the conferences, and what method was to be observed in the progress of the treaty; and, if it had been thought proper to begin with the disposition of the Spanish monarchy, the said Earl was ready to have insisted, as the said instructions directed him to do in that case; but, upon such concert, it was thought most advisable, and so agreed, by all the ministers of the allies, that each of them should, by a separate instrument, make their respective demands; with a general clause to support each other's just and reasonable pretensions; and this was looked upon as the most proper method, and necessary to avoid that confusion, which would otherwise ensue from the contrariety of the demands of the several allies; it being then known, that many of them did and would insist to have the same thing for themselves, in opposition to each other: The imperial ministers, as well as the rest, acquiesced in that method; and, at a following conference, it was further desired, that there should be added to such general clause the words "in conformity to their alliances;" with which the said bishop and Earl, as well as the rest, most readily complied; and those words were accordingly added to the general clause in each of the allies demands; which seemed to give a general satisfaction; and there was nothing further at that time insisted on. In consequence of this agreement, it was the general expectation, that the demand relating to Spain, and the West-Indies, should be particularly inserted only in the instrument to be given in by the imperial ministers; but, there having been a day long before fixed for delivering in to the French all the demands of the allies, the imperialists, the very night preceding, at a conference proposed, that all the allies should mention Spain, and the West-Indies, likewise, in their several demands: This caused a general surprize; and none but the ministers of Portugal concurred with them: Those of the States, in particular, declared the said dominions ought to be demanded by them, whom it did immediately concern; and that the method things had been put into could not suffer it to be otherwise; but, the next morning, to give content to the imperialists, they yielded to make a verbal declaration among the allies, that they were resolved to make good all their treaties on occasion of this war, as well those that related to Spain, as those made with Portugal, Prussia, Savoy, and others: The British plenipotentiaries, to give the like satisfaction, declared publicly at the conferences the same day, that as her majesty insisted for a just and reasonable satisfaction for all her allies, in conformity to all her alliances, those that might concern Spain, and the Indies, were understood thereby, as well as others that concerned the interest of the rest of the allies; wherewith the Austrian and Portugal ministers seemed satisfied; nor did they request any thing further from the said bishop and Earl on that head; and therefore he humbly apprehends, that in the negociation he neither declined to insist, that Spain, and the West-Indies, should not be allotted to the House of Bourbon, as far as his instructions, directing him to act in concert with the rest of the allies, required; nor refused to join with the imperial and Portugal ministers, or either of them, to strengthen that demand in such manner as was proper; but in this, and all other matters, he pursued, with constancy, the orders, he from time to time, received from her majesty, as the nature and circumstances of things would give leave: And, in case her late majesty found it impracticable to persist in her first designs of gaining Spain, and the West-Indies, from the House of Bourbon, and thought other expedients for preventing the union of the two monarchies of Spain and France might as well answer the ends of her several alliances, and did thereupon enter into other measures for obtaining a general peace, in which her allies concurred; the said Earl hopes, that his conforming himself to the measures, not only prescribed by her majesty, whose minister he was, and whom it was his duty to obey, but also approved by both Houses of Parliament, will not be esteemed an acting in defiance of the treaties between her majesty and her allies; in contempt of the advice, or opinion, of parliament, or in violation of his instructions: And he cannot entertain such diffidence of your lordships' justice and goodness, as to suspect, that his actions, which proceeded from a principle of obedience to his sovereign, and zeal for the public service, should be condemned as perfidious or unwarrantable: And the said Earl denies, that by any of his practices, any jealousies or discords were created between her majesty and her allies: the mutual confidence

between them was dissolved; the just balance of power in Europe betrayed; or any advantage given to the common enemy to impose what terms of peace he should think fit upon her majesty, or any of the confederates.

In Answer to the Fifth Article; the said Earl doth acknowledge, that her late majesty, in her Speech from the throne on the 7th day of December, 1711, having acquainted her parliament that both time and place were appointed for opening a Treaty of Peace, did, at the same time, remind them, that the best way to make the Treaty effectual would be to make early provision for the campaign; and believes, supplies were granted, and magazines provided, for that end: But the said Earl saith, that, at the time in the said Article for that purpose mentioned, he was not informed of any reasonable prospect the confederates then had of gaining new conquests over the army of France; nor doth he believe, that the confederate army, at that time, was the strongest that had been in the service during the whole course of the war; but, upon the informations he received at the Hague, about the 19-30th of April, 1712, he understood, that the French were better posted than the confederates, and their army stronger; and that the confederate forces could not march to surprise the French in their lines till they had green forage, which would not be up in three weeks at soonest; and that the French had all their troops, and the confederates wanted great part of theirs; especially the imperialists, who, it was thought, could not, and in fact did not, join the army till about a month after: And the said Earl conceiving the Treaty of Peace in so great forwardness, that, by a constant application of the plenipotentiaries, it might probably be brought to a conclusion in a month's time, he did, upon these considerations, apprehend it would not have been any disservice to the common cause, if a cessation of arms for a month had been then agreed on; during which time, the negociation might have been ended one way or other: And he believes, that, according to his duty he might, about that time, in a letter to her majesty's secretary of state, send an account of the posture and condition of the two armies: But denies, that he took upon him to counsel or advise on that subject; but only proposed the matter for further deliberation in England, if, upon those, or other accounts, such a short cessation should be thought necessary; much less did he then, or at any other time, suggest, or advise, any cessation of arms to be made with France without, or against, the consent of the allies, or with design to disappoint any just expectation they might have, or to give success to any secret or wicked negociations whatsoever: And he is not yet sensible, that a cessation for a month, at that time, could have been any hindrance or prejudice to the cause of the allies, or have given the least advantage to the enemy: However, in fact, no cessation was made upon his said letter: The said Earl saith, he doth not know, or believe, that, in pursuance of any counsel or advice given by him, any directions were sent to her majesty's general in Flanders to avoid engaging in any siege, or hazarding a battle; nor was he privy to the sending any such directions: And he denies, that he advised her late majesty to send any person, much less himself, from England to the army in Flanders, to cause a cessation of arms to be made, or proclaimed, between her majesty and the French army: But acknowledges, that, he being her majesty's ambassador, she was pleased to give him orders and instructions, under her sign manual, dated the 21st day of June, 1712; whereby he was commanded to make all possible dispatch to the army in the Low-Countries; and, upon his arrival there, to inform her general and commander in chief of the resolutions taken in the then important conjuncture of affairs; and also to declare to the generals and commanders in chief of the foreign troops in her majesty's pay, and in the joint pay of her majesty and the States-General, with how much surprize her majesty heard there was the least doubt of their obeying such orders as they should receive from her said general; and likewise, commanding the said Earl to continue with the said army till the affair of the suspension of arms, and the surrender of Dunkirk, were determined one way or other; and that thereupon he resorted to the Hague, and there, in conjunction with his colleague, the then lord bishop of Bristol, acquainted the States General with her majesty's intentions for a short cessation of arms between the armies in the Netherlands, upon certain conditions to be performed by France; one of which was, the surrendery of Dunkirk into her majesty's possession; inviting the States to join with her majesty therein: After this, the said Earl proceeded to the army, and acted conformably to his said instructions; and hopes, that what was the performance of his duty will not be imputed to him as a crime: But the said Earl denies, that any cessation, or separation of the troops, was executed, or performed, by his advice; nor was he otherwise concerned therein, than in signifying the orders he had in command from her majesty to her general: And he believes from the best judgment he can make upon the then situation of affairs, that, if the cessation that was made by her majesty had been generally complied with by the rest of the army, it would have increased the confidence between her majesty and her allies, and have obliged the French king more speedily to comply with their demands in the negociations of peace; and that the most promising expectations from the operations of the campaign, during those two months for which the cessation was to continue, could not equal the advantage accruing to the confederates by the surrender of the important fortress of Dunkirk, which was put into her majesty's hands, as one of the conditions of it.

In Answer to the 6th Article; the said Earl, not admitting that he did advise, or procure, a cessation of arms, or obtain for France any se-

paration of the troops of Great Britain from the confederate army, or was otherwise concerned therein than as in his Answer to the preceding Article is set forth, denies, with a just abhorrence, that he ever had any treacherous purposes to advance or promote the interests of France; or to render any future correspondence, or harmony, between her late majesty and the States General, impracticable; or to weaken or distress the said States, or bring them under any necessity of complying with, or submitting to, the measures of France; nor did or doth he know, or believe, that the taking possession of Ghent and Bruges by the British troops was likely to produce any such consequence; on the contrary, he conceives, that it was very much for the advantage of the allies, especially the States-General, that the English troops took possession of those towns, which would otherwise, in all probability, have fallen into the hands of the French: the said Earl doth acknowledge, that, when the British troops were left by the other forces, who separated from them, and were under a necessity of retiring to some place of security, and it was reported, that the Dutch had given orders to all the commanders of the towns in their possession to refuse them admittance, or passage, he did not think the resolution improper, which was taken by her majesty's general, to send a party of the queen's troops to march through some part of those towns, to make experiment whether they would refuse them passage; for, if passage should not be refused them, the Dutch would be vindicated from the report which had been given out, so highly reflecting on their honour, and so repugnant to the repeated professions and assurances of the good-will and friendship they had so constantly declared for Great Britain; and, if such passage should be refused, it would demonstrate the necessity the English troops were under of resorting to Ghent and Bruges: However, the said Earl doth not admit, that he did advise therein; much less had he any such hopes, or treacherous designs, as in the said Article are mentioned; nor did he seek any pretence to put in execution any design, or resolution, concerted with the ministers of France; nor was any such design, or resolution, to his knowledge, or belief concerted: The said Earl doth believe, that a party of the queen's troops, being sent with intentions to obtain admittance into some of the towns in Flanders, where some of the English magazines and hospitals were, or at least, to obtain passage through them to some other places of security, were refused by the Dutch commanders, although those towns had been conquered chiefly by British blood and treasure: But the States General disavowed their giving any orders for that purpose; and thereby rescued themselves from the reproach of an usage, that might have been thought inhuman to confederate troops, who had spent their blood for their service, and had done no act of hostility, nor given any just reason to the States to apprehend any ill consequences from such passage or admittance: The said earl doth acknowledge, that, after this refusal of the Dutch commanders to receive any of the queen's troops into, or permit them to pass through, the towns in their possession, they retired into Ghent and Bruges; the former having been their usual quarters, and the citadel thereof having been garrisoned by them from the beginning of the campaign: But the said Earl does not know, or believe, there was any treacherous or destructive design in the marching of those troops into, or taking possession of, those towns; nor doth he know, or believe, it was done in concert with any of the ministers of France, who, he is confident, were not privy to, or knew any thing of it, till after it was executed: Nor doth the said Earl discern how it contributed to the prejudice of the confederates, or advantage of the French army; but, on the contrary, the said Earl is very well assured, that it proved greatly to the advantage and security of the former, whose convoys were thereby protected, and the communication between Holland and the confederate army kept open; and the advantages thereby to the common cause were so notorious and visible, that the allies frequently expressed their satisfaction, that those important places had been so well secured; by which means, the allies had all the advantages of those towns, without being at the expence of garrisons, the furnishing of which would have obliged them to make such detachments from their army, as would have rendered it difficult for them to have kept the field: And, on the other hand, the French ministers frequently complained of the great disadvantages occasioned thereby to the arms of their master, whom they thought not well treated by her majesty on that account: And the said Earl apprehends, that the British troops had equal right with those of the States to enter into Ghent and Bruges, or any other place of the Low Countries, which, by agreement, were under the joint government of the queen and the States General; and this happened, at that time, to be of the greater importance, since the queen's troops were thereby enabled to maintain a communication with Dunkirk and England, and was afterwards found likewise very useful towards obtaining the removal of the unjustifiable impositions laid by the Dutch upon the British merchandize in the new conquests in the Netherlands; which they themselves had many months owned to be a grievance; but had not before thought fit to redress.

The said Earl humbly hopes he has fully answered the several Articles exhibited against him; and he doubts not but your lordships will, in your great wisdom, maturely weigh the nature of the Charge, which is chiefly founded on his transactions abroad with the ministers of foreign princes and states; whose testimony, though never so material towards clearing his innocence, it will be impossible for him to produce: He assures himself, your lordships will have a due regard to the wide

extent, the great length and intricacy, of the negociations, wherein he was engaged by his late sovereign's express commands; to which he did the more cheerfully submit, being joined in the most considerable parts thereof with a reverend prelate, whose long residence abroad, and experience in the methods of treating with foreign princes and states, had abundantly qualified him for the discharge of so important a trust: However, the said Earl, on his part, may, in any respect, have been unequal to the province assigned him; yet sure he is, that he always endeavoured to acquit himself therein with the utmost integrity; and cannot but express a just detestation of the many evil intentions wherewith he is loaded by the said Articles: And as he humbly apprehends, the several facts, mentioned in the Articles, if they could be proved, will not appear criminal, abstracted from the ill motives and designs from which they are supposed to proceed; so he is fully persuaded, your lordships will distinguish between the actions themselves, and the intentions wherewith they are charged to be done; and he assures himself, that your lordships will judge of the sincerity of his intentions by the tenor of all his letters and papers, and not by any particular passages selected from them; and is secure in your lordships' justice, that no strained construction of any such passages will be made by your lordships to his prejudice: he cannot but think himself extremely unfortunate in falling under the displeasure of the honourable House of Commons; nor could he receive the first intimation of it without the greatest surprise: not being conscious to himself that he had transgressed any known law, he was not without hopes, having spent the best and greatest part of his life abroad in the army, and in several embassies, always endeavouring to promote the welfare of his country, that he might, at his return, have met with its approbation, as a recompence for his long and faithful services: however, he comforts himself with this reflection, that every step of his proceedings in the late negociation was laid before her majesty and received her royal approbation: nor will it, he conceives, be judged improper, if he observes to your lordships, that the States General, in their letter to her majesty, a little before the signing the peace, acknowledged they could not enough commend her plenipotentiaries for the assistance they had given them in their Treaty with France; and that all the allies gave frequent marks of their esteem for the said Earl, and his colleague, on account of the many services they had received from them. The said Earl is confident it will appear to your lordships, that although he did, with the utmost application, pursue the good of his own country preferable to that of any other nation whatsoever; yet he was never wanting to promote the advantage of the allies, particularly of the States General, where it did not interfere with the interest of Great Britain. A separate Treaty of Peace was so far from his thoughts, that, on the contrary, he was truly zealous to make it general; and he had the happiness to succeed therein in as great a degree as was ever known, when so many confederates were concerned: nor was the said Earl less zealous in supporting, to the utmost of his abilities, the honour and reputation of his late royal mistress; which was so far from being prostituted, or suffering any diminution, by his negociations, that her majesty did, through the whole course of those negociations, and to the very hour of her death, maintain as great and glorious a character as any of her royal predecessors, or as she herself had done in any former part of her reign.

And as to all other matters and things in the said Articles contained, and not herein before particularly answered, the said Earl saith, he is not guilty of them, or any of them, in the manner and form as the same are charged upon him in and by the said Articles; and humbly submits himself to your lordships' judgment. STRAFFORD.

On the 17th, the Lords sent down this Answer to the Commons, by whom, on the 28th, it was read, and the Committee of Secrecy ordered to prepare a Replication to it.

On the 12th of June, the Committee of Secrecy reported that they had prepared the following Replication:

"The Commons have considered the Answer of Thomas earl of Strafford to the Articles of Impeachment exhibited against him by the knights, citizens, and burgesses, in parliament assembled; and do aver their Charge against the said Thomas earl of Strafford, for High Crimes and Misdemeanors, to be true; and that the said Earl is guilty of all and singular the Articles and Charges therein respectively contained, in such manner as he stands impeached: and that the Commons will be ready to prove their charge against him, at such convenient time as shall be appointed for that purpose."

To which the House agreed, and the same was delivered to the Lords on the 14th of the same month.

After which, I find not in the Journal any mention of farther proceedings in the matter. But it is observable, that on Aug. 18th, 1715, lord Strafford protested against the rejection of the motion, to enquire whether lord Bolingbroke had been summoned, and in what manner, and against the passing of the Bills for the Attainder of Bolingbroke and Ormond. [See pp. 1003, 1013, of this Volume.] In the debates in the House of Lords, upon the Bill against Atterbury, [see the Proceedings against him, A. D. 1723], Strafford spoke on behalf of the bishop, and in opposition to the Bill.

See something relative to the Proceedings against lord Strafford in Coxe's Memoirs of sir Robert Walpole.

455. Proceedings against Robert Earl of Oxford,* before the House of Lords, upon an Impeachment for High Treason, and other High Crimes and Misdemeanors: 3 George I. A. D. 1717.

June 24, 1717.

The Earl of Oxford having been impeached by the House of Commons, and being confined near two years in the Tower, without being brought to a trial, presented a Petition to the House of Lords, setting forth his long confinement, submitting his case to their lordships' consideration, and praying that his imprisonment might not be indefinite.

Upon this Petition some of the Lords urged, that the Impeachment was *ipso facto* destroyed

* Swift, in his Catalogue of 'those who have made great figures in some particular action or circumstance of their lives,' inserts 'Robert Harley, earl of Oxford, at his Trial.' In his History of the Four Last Years of the Queen, he has pourtrayed the character of Oxford thus:

"This person had been chosen Speaker successively to three parliaments, was afterwards secretary of state, and always in great esteem with the queen for his wisdom and fidelity. The late ministry, about two years before their fall, had prevailed with her majesty, much against her inclination, to dismiss him from her service; for which they cannot be justly blamed, since he had endeavoured the same thing against them, and very narrowly failed; which makes it the more extraordinary, that he should succeed in a second attempt, against those very adversaries, who had such fair warning by the first. He is firm and steady in his resolutions, not easily diverted from them after he has once possessed himself of an opinion that they are right; nor very communicative where he can act by himself, being taught by experience, "That a secret is seldom safe in more than one breast." That which occurs to other men after mature deliberation, offers to him as his first thoughts; so that he decides immediately what is best to be done, and therefore is seldom at a loss upon sudden exigencies. He thinks it a more easy and safe rule in politics, to watch incidents as they come, and then turn them to the advantage of what he pursues, than to pretend to foresee them at a great distance. Fear, cruelty, avarice, and pride, are wholly strangers to his nature; but he is not without ambition. There is one thing peculiar in his temper, which I altogether disapprove, and do not remember to have heard or met with in any other man's character: I mean an easiness and indifference under any imputation, although he be ever so innocent, and although the strongest probabilities and appearances are against him; so that I have known him often suspected by his nearest friends, for some months, in points of the highest importance, to a degree that they were ready to break with him, and only undeceived by time and accident. His detractors, who charge him with cunning, are but ill acquainted with his character; for, in the sense they take the word, and as it is usually understood, I know no man to whom that mean talent could be with less justice applied, as the conduct of affairs, while he has been at the helm, does clearly demonstrate, very contrary to the nature and principles of cunning, which is always employed in serving little turns, proposing little ends, and supplying daily exigencies, by little shifts and expedients. But to rescue a prince out of the hands of insolent subjects, bent upon such designs as must probably end in the ruin of the government; to find out means for paying such exorbitant debts as this nation hath been involved in, and reduce it to a better management; to make a potent enemy offer advantageous terms of peace, and deliver up the most important fortress of his kingdom as a security; and this against all the opposition mutually raised and inflamed by parties and allies: such performances can only be called cunning by those, whose want of understanding, or of candour, puts them upon finding ill names for great qualities of the mind, which themselves do neither possess, nor can form any just conception of. However, it must be allowed, that an obstinate love of secrecy in this minister, seems, at distance, to have some resemblance of cunning; for he is not only very retentive of secrets, but appears to be so too; which I number among his defects. He has been blamed by his friends, for refusing to discover his intentions, even in those points where the wisest man may have need of advice and assistance; and some have censured him upon that account, as if he were jealous of power: but he has been heard to answer, "That he seldom did otherwise, without cause to repent."

"However, so undistinguished a caution cannot, in my opinion, be justified, by which the owner loses many advantages, and whereof all men who deserve to be confided in, may, with some reason, complain. His love of procrastination (wherein doubtless nature has her share) may probably be increased by the same means; but this is an imputation laid upon many other great ministers, who, like men under too heavy a load, let fall that which is of the least consequence, and go back to fetch it when their shoulders are free; for, time is

and determined, since he was not brought to trial the same session in which he was impeached, and that the prorogation was an actual Supersedeas to the whole proceedings; however, the vote of the House passed to the contrary, and the earl of Nottingham, who had insisted strenuously upon it, entered his protestation against it.

This being over-ruled, the duke of Buckingham moved to appoint a short day for the earl's trial, which after some debates was fixed for the 13th of June, and afterwards at the desire of the House of Commons was deferred till Monday the 24th, on which day the Lords came from their House at 12 o'clock in their robes, and went into the Court in Westminster-hall, in their usual order.

The Lords being seated in their places, (and the Commons in a committee of the whole House being in their seats, and the Managers

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often gained, as well as lost, by delay, which, at worst, is a fault on the securer side. Neither probably is this minister answerable for half the clamour raised against him upon that article: his endeavours are wholly turned upon the general welfare of his country, but perhaps with too little regard to that of particular persons; which renders him less amiable, than he would otherwise have been, from the goodness of his humour, and agreeable conversation in a private capacity, and with few dependers. Yet some allowance may perhaps be given to this failing, which is one of the greatest he has; since he cannot be more careless of other men's fortunes, than he is of his own. He is master of a very great and faithful memory; which is of mighty use in the management of public affairs: and I believe there are few examples to be produced, in any age, of a person who has passed through so many employments in the state, endowed with a greater share both of divine and human learning.

"I am persuaded that foreigners, as well as those at home who live too remote from the scene of business to be rightly informed, will not be displeased with this account of a person, who, in the space of two years, has been so highly instrumental in changing the face of affairs in Europe, and has deserved so well of his own prince and country."

And in the 'True Narrative* of what passed at the examination of the marquis de Guiscard,' among other praises of Harley, is the following: "France records her Richelieu, Mazarin, and Louvois. We talk with veneration of the Cecils. But posterity shall boast of Harley as a prodigy, in whom the spring is pure as the stream; not troubled by ingratitude or avarice, nor its beauty deformed by the feature of any vice. The coming age will envy ours a minister of such accumulated worth."

A very different representation of Oxford is

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* Of this "True Narrative," Swift informs Stella, that he had not time to do it himself, and that he was afraid of disobliging Mr. Harley or Mr. St. John in one critical point about it, and so would not do it himself. The Narrative, it appears, was composed by Swift's orders, and from his materials, by one of his 'under-spur-leathers' (as I think he denominates his humbler fellow-labourers in the vineyard of Tory pamphleteering) Mrs. Manley, who wrote the 'Atalantis,' no very creditable associate, or very honourable panegyrist.

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given in the Letter to sir William Wyndham by Swift's friend Bolingbroke:

"Whilst this was doing, Oxford looked on, as if he had not been a party to all which had passed; broke now and then a jest, which savoured of the inns of court and the bad company in which he had been bred: and on those occasions, where his station obliged him to speak of business, was absolutely unintelligible.—Whether this man ever had any determined view, besides that of raising his family, is, I believe, a problematical question in the world. My opinion is, that he never had any other."

Bolingbroke, in a letter written to Swift himself in the year 1734, speaks very contemptuously of Harley. The inconsistencies of Swift's own expressions at different times concerning Harley are the natural consequence of Swift's political tergiversation.

Harley had been created earl of Oxford on the 11th of May 1711. Of this advancement Burnet writes as follows: "The ministers now found, how hard it was to restore credit, and by consequence to carry on the war; Mr. Harley's wound gave the queen the occasion, which she seemed to be waiting for; upon his recovery she had created him an earl, by a double title, of Oxford and Mortimer. Preambles to Patents of Honour usually carry in them a short account of the dignity of the family, and of the services of the person advanced; but his preamble was very pompous, and set him out in the most extravagant characters that flatterers could invent; in particular it said, that he had redeemed the nation from robbery, had restored credit, and had rendered the public great service in a course of many years; all this was set out in too fulsome rhetoric, and being prepared by his own direction, pleased him so much, that whereas all other patents had been only read in the House of Lords, this was printed. He was at the same time made lord treasurer, and became the chief, if not sole minister, for every thing was directed by him. It soon appeared that his strength lay in managing parties, and in engaging weak people by rewards and promises, to depend upon him; but that he neither thoroughly understood the business of the treasury, nor the conduct of foreign affairs. But he trusted to his interest in the queen and in the favourite."

The Preamble to Harley's Patent was composed, (I conjecture in Latin and in English)

for the House being also in places appointed for them;) the House was resumed.

Then Proclamation was made as follows:

Serjeant at Arms. O Yes, O Yes, O Yes! Our sovereign lord the king doth strictly charge and command all manner of persons to keep silence on pain of imprisonment.

Then the commission for appointing a Lord High-Steward was (after three reverences made in coming up from the clerk's table) presented to the Lord High-Steward sitting upon the wool-sack, by the clerk of the crown in Chancery on his knee; and the same being brought to the table, proclamation was again made for keeping silence.

L. H. Steward. (William lord Cowper.) My lords, his majesty's commission is about to be read; your lordships are desired to attend to it in the usual manner, and all others are likewise to stand up uncovered while the commission is reading.

Then the said commission was read (all the Lords and others standing up uncovered) as follows:

"GEORGIUS R.

"Georgius, Dei Gratia, Magnæ Britanniæ, Franciæ et Hiberniæ Rex, Fidei Defensor, &c.

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by Swift. It is published in English in Swift's Works, vol. 4, p. 223. (Nichols's 12mo edition), as follows:

"PREAMBLE TO MR. HARLEY'S PATENT,

"*The Reasons which induced her Majesty to create the Right Honourable Robert Harley a Peer of Great Britain; being a translation of the preamble to his Patent, dated May* 11, 1711.*

"Whatever favour may be merited from a just prince, by a man born of an illustrious and very ancient family,† fitted by nature for all great things, and by all sorts of learning qualified for greater; constantly employed in the study of state affairs, and with the greatest praise, and no small danger, exercising variety of offices in the government; so much does our well-beloved and very faithful counsellor Robert Harley,‡ deserve at our hands: he, who in three successive parliaments was unanimously chosen speaker; and, at the same time that he filled the chair, was our principal secretary of state: in no wise unequal to either province. Places, so seemingly disagreeing were easily reconciled by one, who knew how with equal weight and address to moderate and govern the minds of men: one who could preserve the rights of the people, without infringing the prerogative of the crown; and who thoroughly understood how well government could consist with liberty. This double task being performed; after some respite, he bore the weight of our exchequer as chancellor, and thereby prevented the farther plundering of the nation; and also provided for the settling of a new trade to the South Seas; and (by rescuing public credit) so opportunely relieved the languishing condition of the treasury, as to deserve thanks from the parliament, blessings from the citizens, and from us (who never separate our own interests from the public) no small approbation. Therefore we decree to the man that has so eminently deserved of us and of all our subjects, those honours which were so long since due to him and his family; being induced thereto by our own good pleasure, and the suffrage of all Great Britain: for we take it as an admonition, that he should not in vain be preserved, whom the states of our realm have testified to be obnoxious to the hatred of wicked men, upon account of his most faithful services to us, and whom they have congratulated upon his escape from the rage of a flagitious parricide. We gladly indulge their wishes, that he, who comes thus recommended to us by so honourable a vote of both Houses of Parliament, should have his seat among the peers, to many of whom his family has been long allied; and that he, who is himself learned, and a patron of learning, should happily take his title from that city, where letters so gloriously flourish. Now know ye," &c.

The censure of 'pompous extravagant flattery and fulsome rhetoric' which as we have seen had been passed on this preamble by Burnet, (possibly he knew not by whom it was composed) would not fail to exasperate the political animosity of Swift, who accordingly in return has persecuted the loose and careless style of the bishop with a ludicrous childish minuteness of unrelenting vigilance and inveterate malignity.

Mr. Park, in his edition of lord Orford's Catalogue of Royal and Noble Authors, mentions that there is in the British Museum a tract entitled, An Account of the Conduct of Robert Earl of Oxford, 1715, 8vo. by whom Mr. Park supposes it to have been composed.

See more concerning lord Oxford in Gregg's Case, vol. 14, p. 1371. See, too, the preceding Cases of Bolingbroke, Ormond, and Strafford.

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* "First printed in 4to. in Latin and English, by Morphew, in 1711.

† "This noble family is descended from the ancient house of the de Harlais in France. Their common ancestors were probably a family of that name resident in Shropshire long before the Conquest.

‡ "Robert Harley, esq. eldest son of sir Edward Harley, was born in London, Dec. 5, 1661. He was educated at Shilton, a private school in Oxfordshire, remarkable for producing, at the same time, a lord high treasurer (the earl of Oxford), a lord high chancellor (lord Harcourt), a lord chief justice of the common pleas (lord Trevor) and ten members of the House of Commons, who were all contemporaries as well at school as in parliament.

ticular care shall be taken of the commerce and traffic of both nations, as also for their security, as well in regard to the Low Countries, as the countries adjacent: that when the war is begun, the confederates shall act in concert according to the 7th and 8th Articles of the Treaty of the 3rd of March, in the year of our Lord 1677-8, between England and Holland, which is hereby renewed and confirmed; and no peace, nor truce, or suspension of arms shall be negociated or made, but according to the 9th and 10th Articles of that Treaty; by which it was agreed, that when the two allies come once to an open war, it shall be lawful for neither of them afterwards to come to any cessation of arms with him who shall be declared and proclaimed an enemy, without it be done conjointly and with common consent: that no negociation of peace shall be set on foot by one of the allies, without the concurrence of the other: that each ally shall continually and from time to time, impart to the other every thing that passes in the said negociation, and shall stipulate with the common enemy for the same rights, immunities, exemptions and prerogatives for his ally as he does for himself, if so be the said allies do not agree to the contrary. And whereas the French king having got possession of a great part of the Spanish dominions, exercised an absolute authority over that monarchy, having seized Milan and the Spanish Low Countries by his armies, and made himself master of Cadiz, of the entrance into the Mediterranean, and of the ports of the Spanish West Indies by his fleets, every where designing to invade the liberties of Europe, and to obstruct the freedom of navigation and commerce; and instead of giving the satisfaction that ought justly to be expected, had proceeded to further violences, and had taken on him to declare the pretended prince of Wales, king of England, Scotland and Ireland, and had also influenced Spain to concur in the same affront; her late majesty queen Anne taking notice, that she found herself obliged, for maintaining the public faith, or vindicating the honour of the crown, and to prevent the mischiefs which all Europe was threatened with, to declare war against France and Spain; did according, in the month of May, 1702, in the most public and solemn manner, declare war against France and Spain; and in the said declaration, placing her entire confidence in the help of Almighty God, in so just and necessary an undertaking, declared, That she would, in conjunction with her allies, vigorously prosecute the same both by sea and land, being assured of the ready concurrence of her subjects, in a cause they had so openly and heartily espoused. And his imperial majesty and their high mightinesses, pursuant to the treaties afore-mentioned respectively, in or about the said month of May, 1702, did likewise declare war against France and Spain. And whereas the kings of Portugal and Prussia, the electors of Hanover, Saxony, Treves, Mentz, palatine of the Rhine, the duke of Savoy, the prince of Hesse, the dukes of Wolfembuttle, Mecklenburg and Wirtemburg, the circles of Suabia and Franconia, and of the Upper Rhine, the bishops of Munster and Constance, and other princes and powers, being invited by the said Grand Alliance, and relying on the faith thereof, did afterwards become parties to the said confederate war against France and Spain; and in the Treaty entered into in or about the month of May, 1703, between his imperial majesty, the queen of Great Britain, the States General, and the king of Portugal, it is amongst other things, expressly stipulated, that no peace nor truce shall be made, but by the mutual consent of all the confederates; nor shall any at any time be made, while the second grandson of the most Christian king by the dauphin, or any other prince of the line of France continues in Spain, nor unless the crown of Portugal shall fully possess and enjoy all the lands, kingdoms, isles, castles, cities, towns, &c. with their territories and dependencies in Spain, or elsewhere, which it now possesses. And in the Treaty of Nordlingen, ratified by her late majesty, it is, amongst other things, expressly agreed, that it shall not be allowed to make particular treaties, but the peace shall be jointly treated of, and shall not be concluded without obtaining, as far as is possible, the re-union of the lands belonging to the circles, and until at least the security of the associated circles be absolutely provided for in the best manner that is possible, and better than it has formerly been. And whereas to give the greatest strength that was possible to the union, so necessary to both nations, her late majesty and the States by a Treaty in the month of June, 1703, renewed and confirmed all treaties and alliances then subsisting between them; and therein it is, amongst other things, expressly and particularly stipulated, that as the said most serene queen, and the lords the States General are now in war with France and Spain, and are reciprocally bound to assist each other, and mutually to defend, maintain and preserve their countries and subjects in their possessions, immunities and liberties, as well of navigation and commerce, as other rights whatsoever by sea and land, against and in opposition to all kings, princes and states, and particularly against France and Spain, to the end a just and reasonable peace may the better be obtained, that may establish the repose and tranquillity of Europe, it is agreed between the most serene queen of Great Britain, and the said lords the States General, that neither of the said allies shall make a suspension of arms, or a peace with France or Spain, or any other king, prince or state, who shall molest or attack either of the said allies, but in conjunction and by common consent. And whereas the said war was for several years carried on with vigour and unanimity by her majesty and her allies, at a vast expence both of blood and treasure; for the support of which, on the part of England, many millions have been granted by parliament, who, on many occasions since, continued not only to express their sense of the justice

and necessity of the war, but did frequently give their humble advice to the throne, that no peace could be safe, honourable or lasting, so long as the kingdom of Spain and the West Indies continued in the possession of any branch of the House of Bourbon. And whereas it pleased Almighty God to grant to the confederate arms, under the command of their great and victorious general the duke of Marlborough, such unparalleled successes as exceeded even their own hopes and the fears of the enemy; and by the many signal victories of Schellenberg, Hochstet, Audenarde and Ramellies, as well as by the conquests of the electorates of Bavaria and Cologn, and the reduction of the Spanish Netherlands, and many other great advantages both by sea and land; and by the wisdom and unanimity of their counsels, the glory of the confederate arms, and the reputation of Great Britain in particular, was raised to an higher pitch than in any former age. And whereas her late majesty, in conjunction with her allies, wisely foreseeing, that whenever the enemy should be brought to make overtures of peace, the surest way to put an end to the war, and prevent France from putting in practice her usual intrigues, was, by previously insisting on such conditions from France, that nothing might remain to be done in a general assembly, but to give them the form of a Treaty; and for these reasons a preliminary Treaty was concluded on, and was afterwards signed by the plenipotentiaries of his imperial majesty, of her late majesty the queen of Great Britain, and of the lords the States General of the United Provinces, and afterwards ratified by their principals; wherein the interests of the several allies were adjusted, in order to a general Treaty of Peace with France: and therein the restitution of the Spanish monarchy to the House of Austria, being one of the chief causes for carrying on the war, is laid down as an immutable foundation among the allies. And whereas in the year of our Lord 1709, the king of France having first signified his consent to the restitution of the Spanish monarchy to the House of Austria, sent his ministers to the Hague to treat with the ministers of the principal allies on a general peace; and in the conferences held thereupon, the interests of all the allies, as adjusted in the said preliminaries, were positively and expressly agreed to by the ministers of France, and particularly that of the restitution of the entire Spanish monarchy to the House of Austria; and the said negociation was afterwards broke, on no other dispute but on the 37th Article of the preliminary Treaty, concerning the time and manner of evacuating Spain. And whereas, the conferences being resumed at Gertruydenberg, in the year of our Lord 1710, the said 37th Article became the only subject of the negociation which was there set on foot, for the finding out some equivalent by which the same security might be given to the allies, as they had by the 37th Article of the said preliminaries; and though it was unquestionable, that before any negociation was begun, that while the preliminaries were treating, that by those preliminaries themselves, that before the last negociation was resumed, and all the while it lasted, the restitution of Spain and the Indies was laid down as a firm and immoveable foundation of the negociation, and no question remained concerning it with the ministers of the allies or those of France, but touching the security for its execution: and though all reasonable and prudent overtures were made by the allies for settling an equivalent, yet the conferences were broke off by France without any satisfaction therein. And whereas the sincere intentions of all the allies to have settled the peace of Europe on solid and equitable foundations, were notorious and incontestible, and the rupture of the said negociations could only be imputed to the enemy; her sacred majesty, in conjunction with her allies, renewed their resolutions to continue and push the war with vigour, and to make all possible efforts, as the only means left to force a good and general peace. And her majesty in her Speech from the throne on the 15th of November, 1709, taking notice of the endeavours of the enemy during the said negociations, to amuse and create jealousies among the allies, declared her resentment thereat, and earnestly recommended the carrying on the war, and a vigorous prosecution of the advantages obtained, that she might put the last hand to that great work of reducing the exorbitant and oppressive power which had so long threatened the liberties of Europe. And it having pleased Almighty God, after the said preliminary Treaty, to bless the confederate army under the command of their consummate general the duke of Marlborough, with new and signal conquests, the reduction of Tournay, the victory of Tasnieres, the taking of Mons and Doway, Bethune, St. Venant and Aire, and the penetrating the lines near the Scarpe. And whereas, from the prosperous condition of the affairs of the allies, and the wisdom, firmness, and unanimity of their counsels, nothing remained, in all human appearance, but that they should reap the fruits of all their victories in a speedy, just, honourable and lasting peace; and on the other hand, nothing was left to raise the hopes of the enemy, whereby to defeat that happy prospect, but the success of their secret endeavours to disunite the confederacy. And whereas Robert earl of Oxford and earl Mortimer, with other evil-minded persons, enemies to the true interests of their own country, as well as to the common liberties and welfare of Europe, having by many wicked arts and base insinuations obtained access to her late majesty queen Anne, and in or about the months of July or August, 1710, being admitted into her councils, and into places of the highest trust, and to make way for their wicked enterprizes, did by their evil counsel and advice, prevail on her majesty to dissolve a parliament which had given the most unquestionable proofs of their great wisdom, and of

their true zeal for the common cause; for which, as well as for the many marks of duty and affection given to her, her majesty returned her hearty thanks, and expressed her great satisfaction. And whereas the said Robert earl of Oxford and earl Mortimer, and others his accomplices, had formed a treacherous correspondence with the emissaries of France, by means whereof certain propositions were transmitted from France to England, signed by Monsieur de Torcy, secretary of the king of France, in the month of April, 1711, to be the basis of the Treaty of a general peace; which propositions, though her majesty was prevailed on by the false counsels of the said Robert earl of Oxford and earl Mortimer, and others, to receive as a sufficient foundation of a Treaty of a general peace, and as such to communicate them to the grand pensionary and the ministers of Holland, her majesty however was graciously pleased at the same time to declare to them her pleasure by her secretary of state, that being resolved in making peace as in making war, to act in perfect concert with the States, she would not lose a moment in transmitting a paper of that importance; and that though the propositions were general, and contained an air of complaisance to her majesty, and the contrary towards the States, yet that could have no ill consequences, as long as her majesty and the States understood one another, and acted with as little reserve as became two powers so nearly allied in interest; and that the pensionary should be assured, that that rule should be inviolably kept on her part, which gracious declaration of her majesty, as well as the said propositions, being maturely considered by the grand pensionary and the ministers of Holland, an answer was returned from them to her majesty, full of duty and thankfulness for the obliging manner in which she was pleased to communicate the said propositions, and with the utmost assurances of mutual confidence, so necessary to prevent the designs of the enemy; but more particularly that the States desired, equally with Great Britain, to have a general, definitive, and lasting peace, and declared that they were ready to join in all the most proper measures to procure it; that the propositions were yet too general, and that the States desire, as Great Britain did, that France would explain herself more particularly upon the points therein contained, and impart a plan which she thinks the most proper to secure the interest of the allies, and settle the repose of Europe, after which a more particular negociation might be entered into.* Notwithstanding all which premises,

ARTICLE I.

He the said Robert earl of Oxford and earl Mortimer having no regard to the honour or safety of her late majesty or her kingdoms, or to the many solemn engagements she was then under to the old and faithful allies of this nation, or to the common liberties of Europe;

* A very important part of Bolingbroke's Letter to sir William Wyndham, is appropriated to the history of the Treaty of Utrecht, and in relating it he exhibits a most melancholy, disgusting and disgraceful representation of the statesmen of his time. After saying, "I am afraid that we" [the Tory ministry of 1710,] "came to court in the same dispositions as all parties have done; that the principal spring of our actions was to have the government of the state in our hands; that our principal views were the conservation of this power, great employments to ourselves, and great opportunities of rewarding those, who had helped to raise us, and of hurting those, who stood in opposition to us: It is however true, that with these considerations of private and party interest, there were others intermingled which had for their object the public good of the nation, at least what we took to be such." He proceeds:

"I am far from thinking the treaties, or the negociations which led to them, exempt from faults. Many were made no doubt in both, by those who were concerned in them, by myself in the first place: and many were owing purely to the opposition they met with in every step of their progress. I never look back on this great event, past as it is, without a secret emotion of mind; when I compare the vastness of the undertaking, and the importance of its success, with the means employed to bring it about, and with those which were employed to traverse it. To adjust the pretensions and to settle the interests of so many princes and states, as were engaged in the late war, would appear, when considered simply and without any adventitious difficulty, a work of prodigious extent. But this was not all. Each of our allies thought himself entitled to raise his demands to the most extravagant height. They had been encouraged to this, first by the engagements which we had entered into with several of them; with some to draw them into the war, with others to prevail on them to continue it, and secondly by the manner in which we had treated with France in seventeen hundred nine and ten. Those who intended to tie the knot of the war as hard, and to render the coming at a peace as impracticable as they could, had found no method so effectual as that of leaving every one at liberty to insist on all he could think of, and leaving themselves at liberty, even if these concessions should be made, to break the treaty by ulterior demands. That this was the secret, I can make no doubt after the confession of one of the plenipotentiaries (Buys, pensionary of Amsterdam,) who transacted these matters, and who communicated to me and to two others of the queen's ministers an instance of the duke of Marlborough's management at a critical moment, when the French ministers at Gertruydenburg seemed inclinable to come into an expedient for explaining the 37th Article of the preliminaries, which could not have been refused. Certain it is, that the king of France was at that time in earnest to execute

but, being devoted to the interest and service of the French king, the common enemy: and being then lord high-treasurer of Great Britain, and one of her majesty's most honourable privy council, contrary to his oath, and in violation of his duty and trust, and in defiance of the tenour of the several treaties afore-mentioned, or some of them, as well as of the frequent advices of parliament, and the many declarations of her majesty from the throne; but more particularly in defiance of the solemn and mutual assurances which had been so lately renewed between her majesty and the States, to act in perfect concert with them in making peace as in making war, did on or about the months of July or August, in the year of our Lord 1711, maliciously and wickedly form a most treacherous and pernicious contrivance and confederacy with other evil-disposed persons, then also of her majesty's privy-council, to set on foot a private, separate, dishonourable, and destructive negociation of peace between Great Britain and France, without any communication thereof to her majesty's allies, according to their several treaties; and was not only wanting in his duty and trust to her majesty, by not opposing, and, as far as was in his power, by not advising her majesty against going into any private separate negociation with France; but in execution of his purposes aforesaid, he the said Robert earl of Oxford and earl Mortimer did advise her late majesty to

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the article of Philip's abdication: and therefore the expedients for adjusting what related to this article would easily enough have been found, if on our part there had been a real intention of concluding. But there was no such intention: and the plan of those who meant to prolong the war was established among the allies, as the plan which ought to be followed whenever a peace came to be treated. The allies imagined, that they had a right to obtain at least every thing which had been demanded for them respectively: and it was visible that nothing less would content them. These considerations set the vastness of the undertaking in a sufficient light.

"The importance of succeeding, in the work of the peace, was equally great to Europe, to our country, to our party, to our persons, to the present age, and to future generations. But I need not take pains to prove what no man will deny. The means employed to bring it about were in no degree proportionable. A few men, some of whom had never been concerned in business of this kind before, and most of whom put their hands for a long time to it faintly and timorously, were the instruments of it. The minister who was at their head showed himself every day incapable of that attention, that method, that comprehension of different matters, which the first post in such a government as ours requires in quiet times. He was the first spring of all our motion by his credit with the queen, and his concurrence was necessary to every thing we did by his rank in the state: and yet this man seemed to be sometimes asleep, and sometimes at play. He neglected the thread of business, which was carried on for this reason with less dispatch and less advantage in the proper channels, and he kept none in his own hands. He negociated, indeed, by fits and starts, by little tools, and indirect ways: and thus his activity became as hurtful as his indolence; of which I could produce some remarkable instances. No good effect could flow from such a conduct. In a word, when this great affair was once engaged, the zeal of particular men in their several provinces drove it forward, though they were not backed by the concurrent force of the whole administration, nor had the common helps of advice till it was too late, till the very end of the negociations: even in matters, such as that of commerce, which they could not be supposed to understand. That this is a true account of the means used to arrive at the peace, and a true character of that administration in general, I believe the whole cabinet council of that time will bear me witness. Sure I am, that most of them have joined with me in lamenting this state of things while it subsisted, and all those who were employed as ministers in the several parts of the treaty felt sufficiently the difficulties which this strange management often reduced them to. I am confident they have not forgot them.

"If the means employed to bring the peace about were feeble, and in one respect contemptible, those employed to break the negociation were strong and formidable. As soon as the first suspicion of a treaty's being on foot crept abroad into the world, the whole alliance united with a powerful party in the nation to obstruct it. From that hour to the moment the congress of Utrecht finished, no one measure possible to be taken was omitted to traverse every advance that was made in this work, to intimidate, to allure, to embarrass every person concerned in it. This was done without any regard either to decency or good policy: and from hence it soon followed, that passion and humour mingled themselves on each side. A great part of what we did for the peace, and of what others did against it, can be accounted for on no other principle. The allies were broke among themselves before they began to treat with the common enemy. The matter did not mend in the course of the treaty: and France and Spain, but especially the former, profited of this disunion.

"Whoever makes the comparison, which I have touched upon, will see the true reasons which rendered the peace less answerable to the success of the war than it might, and than it ought to have been. Judgment has been passed in this case, as the different passions or interests of men have inspired them. But the real cause lay in the constitution of our ministry, and much more in the obstinate opposition which we met with from the Whigs and from the allies." Bolingbroke, vol. 1, p. 17.

send Matthew Prior, esq.* directly to the court of France, to make propositions of peace, without communicating the same to her majesty's allies. And accordingly the said Matthew Prior by the advice, and with the privity of him the said earl of Oxford and earl Mortimer, and other false and evil counsellors, in or about the months of July or August, in the year of our Lord 1711, was sent in a clandestine manner from England to France, and did communicate the said propositions of peace to the ministers of France, in which the particular interests of Great Britain, as well as the common interest of Europe, were shamefully betrayed: And in manifestation of his said design to exclude her majesty's allies from their just share in the said negociation, an express Article was inserted in the said propositions, by the privity and advice of him the said Robert earl of Oxford and earl Mortimer, that the secret should be inviolably kept till allowed to be divulged by the mutual consent of both parties; although the French king had in the propositions signed by Monsieur de Torcy, and transmitted in the month of April preceding, offered to treat with the plenipotentiaries of England and Holland alone, or jointly with those of the allies at the choice of England. By which treacherous and dangerous advice he the said Robert earl of Oxford and earl Mortimer did not only contrive and set on foot a negociation of peace more advantageous to France than even France itself had asked; but thereby did put it into the power of the common enemy to create incurable jealousies and discords between her majesty and her faithful allies, and to destroy that confidence which had so long and so successfully been cultivated between them, and which was so necessary for their common safety.

ARTICLE II.

That the French king laying hold of the said treacherous overture, set on foot in manner aforesaid, did in or about the months of August or September, in the year of our Lord 1711, send over monsieur Mesnager into England to carry on a clandestine and separate negociation of peace; which being made known to him the said Robert earl of Oxford and earl Mortimer, he did afterwards in the said month of September, 1711, secretly and unlawfully, without any colour of authority, meet, confer and treat with the said sieur Mesnager on the negociations of peace between Great Britain and France; and therein he did advise and promote the making a private and separate Treaty or Agreement between the said crowns; which said Treaty or Agreement was afterwards, with the privity, consent and advice of him the said Robert earl of Oxford and earl Mortimer, agreed, concluded on and signed by the said sieur Mesnager on the part of France, and by the earl of Dartmouth and Henry St. John, esq. two of her majesty's principal secretaries of state, in behalf of her late majesty, by virtue only of her majesty's sign manual under the signet, and without the least knowledge or participation of the allies. In which Treaty the immediate interests even of Great Britain are given up to France, and the duke of Anjou is admitted to be king of Spain; an express stipulation being therein made with the sieur Mesnager in the name, and (as is therein alleged) pursuant to powers from king Philip as king of Spain: whereby he the said Robert earl of Oxford and earl Mortimer did not only assume to himself regal power, in taking upon him to meet and treat with the enemy without any authority or powers from her majesty; but did what in him lay to subvert the ancient and established constitution of the government of these kingdoms, by introducing illegal and dangerous methods of transacting the most important affairs of the state; and by which private and separate Treaty, he the said Robert earl of Oxford and earl Mortimer did what in him lay to dissolve and cancel the many solemn treaties her majesty then stood engaged in to her good and ancient allies, and whereby her majesty, even before any thing was finally settled for the safety or advantage of her kingdoms, was brought to this fatal dilemma; either to submit to the dictates of France in the progress of the said negociation, or, so notorious a breach of national faith being divulged by the enemy, from thence to lose all future confidence of her good allies.

ARTICLE III.

That the said Robert earl of Oxford and earl Mortimer, the better to disguise and carry on the aforesaid private, separate and dangerous negociation, did, together with other evil-disposed persons, then in high trust under her majesty, contrive and advise the preparing and forming a set of general preliminaries, entitled, "Preliminary Articles on the part of France to come to a General Peace;" and that the same should be signed by the sieur Mesnager only. And the same being so prepared and signed by the said sieur Mesnager, he the said Robert earl of Oxford and earl Mortimer did, contrary to his duty and trust, impiously advise her sacred majesty that the same should be, and accordingly they were received by her majesty, and communicated to the ministers of the allies then residing in England, as the ground of a general negociation of peace; and as if the same were the only transactions that had been on this subject between Great Britain and France. And to this end, the private Treaty, signed as aforesaid by the earl of Dartmouth and Mr. St. John on the part of England, and by the said sieur Mesnager on the part of France, was by the evil advice and contrivance of him the said Robert earl of Oxford and earl Mortimer, and others, wilfully and industrious-

* See in 7 New Parl. Hist. 214, the Report of the Committee of Secrecy respecting Prior, made by Walpole, Sept. 20, 1715. And in the same volume, Appendix No. 2, Prior's account of his examination before that committee.

by concealed not only from all the allies, but even from her majesty's council and her parliament. And he did further advise her majesty not only to accept the said general preliminaries, but in her name, and by her authority, to communicate the same to the States General, as a sufficient foundation whereupon to open the conferences of peace with France. And the more effectually to cover from the States General the pernicious steps which his evil influence had engaged her majesty in with the common enemy; certain instructions were prepared, and by his counsel and advice, were signed by her majesty, and delivered to the earl of Strafford, her ambassador to the States General; wherein the said earl of Strafford is directed to represent to the Pensionary of Holland, and to such others as shall be appointed to confer with him, that when her majesty had received in May last, by his excellency's dispatches, an account of the sense which those among them, who were at that time in the secret, had of the overtures made by France for setting a general negociation of peace again on foot, and of the answer which it was desired might be returned to the propositions signed by monsieur de Torcy; her majesty did immediately acquaint the enemy, that their offers were thought by her and by the States General neither particular nor full enough; and therefore that her majesty did insist, that they should form a distinct project of such a peace as they were willing to conclude. Whereas no such instances had been made to the enemy on her majesty's behalf; but on the contrary, notwithstanding her majesty had declared that the propositions of monsieur de Torcy were thought by her and the States General neither particular nor full enough, yet without any further explication from the enemy, her majesty was prevailed on, in manner aforesaid, to send over propositions to France as general and ensnaring, and in all respects as destructive to the interests of Great Britain and her allies, as the propositions of monsieur de Torcy. And the said general preliminaries, communicated to the States in manner aforesaid, were calculated only to amuse and deceive them into a general negociation with France. And in the particulars abovesaid, as well as the several others, the said instructions contained matters either false or grossly prevaricating and evasive. By which most wicked counsels of him the said Robert earl of Oxford and earl Mortimer, that unquestionable truth and sacredness which by the laws of nations ought to accompany and constitute the instructions of public ambassadors to princes in friendship and confederacy against the common enemy, was most vilely prostituted to the most dangerous purposes, to deceive and mislead her majesty's good allies, in matters of the greatest importance to their own interests and the interests of these kingdoms; the honour of her majesty's sacred person, and of the imperial crown of these realms, which had been raised to the highest pitch of glory abroad, and had been justly held in veneration with her good allies, was scandalously debased and betrayed; and the royal hand, by the wicked arts of him the said Robert earl of Oxford and earl Mortimer, was made the instrument to advance the interest of the common enemy.

ARTICLE IV.

That whereas the earl of Strafford, pursuant to the said instructions, had communicated the preliminaries signed by monsieur Mesnager to the States General, who being justly alarmed at the pressing instances made on the part of her majesty, that conferences should be opened on propositions as general and uncertain as those so lately offered by France, and signed by monsieur de Torcy; and their high mightinesses having been unsuccessful in their remonstrances to the earl of Strafford against opening the conferences upon the said propositions, did send over monsieur Buys their ambassador to represent to her majesty, as well the hazard of meeting the ministers of France before the essential Articles were first settled by special preliminaries, or at least explained by France, and made specific; as likewise the advantages to the enemy, who being but one body, were influenced by one council, and directed by one power; whereas the confederates consisted of several powers, whose interests are not only distinct, but in many cases contrary to each other, whereby the French would have a fair opportunity to divide the allies, when it would be impossible for them to break in upon France; and further to represent, that the propositions themselves were in some instances very prejudicial, particularly in the articles of commerce, Dunkirk, and the union of the crowns of France and Spain. All which representations of the said monsieur Buys, by the evil influence of him the said Robert earl of Oxford and earl Mortimer, and others, were rendered ineffectual: but in order to prevail upon the States General to open the conferences upon the said general preliminaries, by the management and contrivance of him the said Robert earl of Oxford and earl Mortimer, and others, an occasion was taken to declare to monsieur Buys, at a committee of council, in her majesty's name, her constant affection and good disposition to their state, and to the promoting their interest, and to treat with their high mightinesses with a perfect confidence and harmony: and at the same time he the said Robert earl of Oxford and earl Mortimer did then falsely and maliciously declare, or was privy to advising and consenting, that it should be, and so it was declared, in her majesty's name, that she had made no separate Treaty with France, nor would ever make any before she had fully complied with all engagements to her allies, and that each of them should have opportunity to make good their pretensions.

By which false, scandalous and dishonourable assurances, he the said Robert earl of Oxford and earl Mortimer did not only highly dis-

honour her majesty, by whose privity the said separate Treaty with France had been before that time concluded and signed; but their high mightinesses, the good friends and ancient allies of her majesty, were grossly abused, and thereby induced to enter into a negociation with France, so dangerous in itself, and so fatal in its consequences.

ARTICLE V.

That her sacred majesty queen Anne having in due form of law, and her great seal, constituted the right reverend John lord bishop of Bristol, and the earl of Strafford, her plenipotentiaries, with full powers to meet, treat, and conclude with the plenipotentiaries of the confederates, and those whom the French king shall on his part depute for that purpose, the conditions of a good and general peace, that shall be safe, honourable, and, as far as is possible, agreeable to the reasonable demands of all parties; he the said Robert earl of Oxford and earl Mortimer, not contenting himself to abuse the royal authority, to the delusion of the States-General, the nearest allies of the queen, but intending the universal prejudice of his imperial majesty, and all the allies of these kingdoms; and thereby the more successfully to carry on the measures of France, wherein he was then engaged, contrived and prepared instructions, or was privy to, consenting and advising the same, for her majesty's said plenipotentiaries, which she was prevailed upon by the said Robert earl of Oxford and earl Mortimer's evil counsel to sign, and the same were delivered to the said plenipotentiaries; wherein among other things they are instructed to the effect following, viz. "If it shall be thought proper to begin by the disposition of the Spanish monarchy, you are to insist that the security and reasonable satisfaction which the allies expect, and which his most Christian majesty has promised, cannot be obtained, if Spain and the West-Indies be allotted to any branch of the House of Bourbon:" whereas the said Robert earl of Oxford and earl Mortimer had at that time privately and treacherously negociated and agreed with the ministers of France, that Spain and the West-Indies should remain in a branch of the House of Bourbon; and had prevailed on her sacred majesty to be party to the said private treaty, wherein the same is necessarily implied. And the said plenipotentiaries are further instructed, "in case the enemy should object, as the imperial ministers had done, that the second Article of the seven signed by the sieur Mesnager implies, that the duke of Anjou shall continue on the throne of Spain; you are to insist, that those Articles, as far as they extend, are indeed binding to France, but that they lay neither us nor our allies under any positive obligation;" whereby the said Robert earl of Oxford and earl Mortimer basely entered into a confederacy and collusion even with the ministers of the enemy, and prevailed on her majesty to give her royal consent thereto, the more effectually to impose on his imperial majesty and all the allies, and to conceal the said secret negociations, and the separate treaty that had then been agreed on between Great Britain and France. And the said Robert earl of Oxford and earl Mortimer, not only in the particulars before-mentioned, but in many others contained in the said instructions, has brought a lasting reproach on the crown of these realms, and grossly violated the many treaties wherein her sacred majesty had then engaged to her allies, to act in perfect concert with them throughout the negociations of peace.

ARTICLE VI.

That the conferences of peace being opened between the plenipotentiaries of the allies, and those of the enemy, for the negociating a general peace upon the mutual and most solemn engagements amongst the allies, not only to act in perfect confidence with each other, but to promote their common interest, and to obtain from the enemy all just and reasonable satisfaction; and a specific explanation of the general preliminaries having been given by the enemy at Utrecht, whereon the allies delivered their respective demands; by the artifices of France, and the secret encouragement and concurrence of the ministers of Great Britain, the progress of the said public negociation was delayed and kept in suspence, under pretence of the enemy's refusing to give their answer in writing: during which time, he the said Robert earl of Oxford and earl Mortimer again assuming to himself regal power in derogation of the royal authority, to treat of peace with France, which was then delegated under the great seal of Great Britain to her majesty's plenipotentiaries at Utrecht, and for the promoting the designs of the enemy to the apparent destruction of the common cause of her majesty and her allies, contrary to the known laws and constitution of this kingdom, in direct violation of the several alliances her majesty then stood engaged in, and in opposition to the many assurances given by her majesty to act in concert with her allies, and in defiance of the express instructions given to her said plenipotentiaries, was not only wanting in his duty to her majesty, as far as in him lay, to have put an end to, and prevented any further private and unlawful negociations with France, but did, with others his accomplices, advise, concur, continue, and promote a private, separate, and unjustifiable negociation of peace with France, directly from England to France, without any communication thereof to the allies; and in such private negociations did concert with the ministers of the enemy terms of peace highly prejudicial to the interest of her majesty and her kingdoms, and of all her allies, and whereby the good effects of the said general negociations were entirely defeated.

ARTICLE VII.

That her sacred majesty queen Anne having been prevailed on by the false counsels of him the said Robert earl of Oxford and earl Mortimer to accept of a treaty with France, on the supposition that the Spanish monarchy should continue in the possession of a branch of the House of Bourbon; and it being acknowledged even by the French king in the general preliminaries signed by monsieur Mesnager, that the excess of power from the re-union of the crowns of France and Spain would be contrary to the good and general repose of Europe: he the said Robert earl of Oxford and earl Mortimer having nothing so much in view as the aggrandizing the common enemy, yet always intending to cover the iniquity of his heart under specious pretences and false appearances, did wickedly and treacherously advise and carry on a private and separate negociation with France, on the subject of a renunciation of his right to the kingdom of France by the duke of Anjou, and that such renunciation should be the security against the re-union of the two kingdoms. And by the influence of his evil counsels her majesty was prevailed on to accept and finally to conclude and ratify a Treaty of Peace with France, wherein the said renunciation is taken as a sufficient expedient to prevent the mischiefs that threatened all Europe, in case the crowns of France and Spain should be united upon the head of one and the same person; although he the said Robert earl of Oxford and earl Mortimer well knew, that a memorial had been, during the said separate negociation, transmitted by monsieur de Torcy, secretary of state and minister to the French king, to one of her majesty's principal secretaries of state; whereby it was declared, that the said renunciation would be null and invalid by the fundamental laws of France, which laws were looked upon as the work of him who had established all monarchies, and which he only could abolish; and that no renunciation thereof could destroy it: and if the king of Spain should renounce, they would deceive themselves that should receive it as a sufficient expedient to prevent the mischiefs proposed to be avoided. By which false and treacherous counsels, he the said Robert earl of Oxford and earl Mortimer did not only betray the interests of the common cause into the hand of the most formidable enemy, but wilfully and maliciously abused the power and influence which he had obtained with her majesty, so far as to engage her sacred majesty, and the honour of the imperial crown of these kingdoms, to become party with France in so fatal a deceit.

ARTICLE VIII.

That her late majesty queen Anne having on the 7th day of December, in the year of our Lord 1711, earnestly recommended it from the throne, that provision might be made for an early campaign, in order to carry on the war with vigour, and as the best way to render the Treaty of Peace effectual; in order to which, vast supplies were granted, and magazines provided at a great expence for an early campaign; and in pursuance thereof, her majesty having sent her generals, Lumley and Cadogan, to give early assurances to her allies of her sincere intentions, and likewise expressly instructed her general, the duke of Ormond, not only to renew the same assurances and declare her resolutions of pushing on the war with the utmost vigour, but to concert with the generals of the allies the proper measures for entering on action; and the confederate army, which at that time was the finest and strongest that had been in the service during the whole course of the war, and provided with all necessaries to act with vigour, having marched, according to the resolution taken in concert with her majesty's general, almost up to the enemy, with a great superiority both as to the number and goodness of troops, and animated with a noble courage and zeal to acquit themselves bravely; so that in all human appearance, and with the divine assistance, which had appeared so visibly for them on many other occasions, they would have been able, either by battle or siege, to have gained great advantages over the enemy, to have bettered the affairs of the allies, and to have facilitated the negociations of peace: and the ministers of France have frequently and earnestly represented to the said Robert earl of Oxford and earl Mortimer, and others his accomplices, during their secret negociations, their just apprehensions from the bravery and good disposition of the confederate army; he the said Robert earl of Oxford and earl Mortimer, being truly informed of the sure prospect, which, by the blessing of God, the army of the confederates then had, of gaining new conquests over the army of France, and whereby they would have been enabled to have forced terms of peace, safe, honourable, and lasting: in order to disappoint those comfortable expectations of the allies, and to give success to his secret negociations with the ministers of France, was privy to, consenting and advising, together with other false and evil counsellors, and together with them did advise and consent, that an order should be sent in her majesty's name, to the duke of Ormond in Flanders, to avoid engaging in any siege, or hazarding a battle till further orders; although nothing had then been settled in the said private negociations for the interest and security of Great Britain; and although Philip king of Spain at that time had not consented to the renunciation of his right to the crown of France. And not contenting himself with having obtained that fatal step, so highly advantageous to the cause of France, but being wickedly determined to do all that in him lay to dissolve the whole confederacy, he the said Robert earl of Oxford and earl Mortimer, with others, was privy to, and did consent and advise,

that orders should be sent to the bishop of Bristol (Robinson) one of her majesty's plenipotentiaries then at Utrecht, to take the first solemn opportunity to declare to the Dutch ministers, that her majesty looked on herself from their conduct to be then under no obligation whatsoever to them: which two declarations giving just alarms to all the allies, they represented to the bishop of Bristol their general dissatisfaction, and the inexpressible consternation they were all in; that these proceedings were the unavoidable ruin of Europe: They urged religion, liberty, and the faith of treaties, to shew the enormity of this usage; and the States expressed their uneasiness on no account so much, as that they could not come to the knowledge of their own lot. Which representations the bishop of Bristol did, at the instance of the allies, signify to one of her majesty's principal secretaries of state; but their high mightinesses finding that all applications to the ministers of Great Britain and in particular to the said Robert earl of Oxford and earl Mortimer, were of no avail against France, and for the interest of the common cause, thought it necessary, in a manner the most moving and respectful, to address directly to her majesty by a letter of the 5th of June, 1712; therein expressing their great surprize and affliction at the two declarations aforementioned; and finding it difficult to conceive how such declarations, so prejudicial to the common cause, given so suddenly without their knowledge, and undoubtedly too without the knowledge of the other allies, could agree and consist with the nature of an alliance, and with those assurances and engagements her majesty had so lately made; and not knowing how to reconcile it with the great goodness and kindness which her majesty had always honoured them with, and not being able to conceive how such a sudden change could happen with respect to them, having carefully examined their own conduct, and finding nothing therein that could have given ground to her majesty's dissatisfaction: and having represented the visible and immediate fatal consequences of the said two orders, not only to the common interest of her majesty and the States, but to the whole confederacy and to the Protestant religion; they beseeched her majesty, with all the respect, and all the earnestness they were capable of, that she would not persist in the declarations made by by the bishop of Bristol, and would be pleased to revoke the orders given to the duke of Ormond; and would authorize him to act according to occurrences, and as the exigency of the war, and the advancement of the common cause should require. Notwithstanding which, he the said Robert earl of Oxford and earl Mortimer, being acquainted with the said representations of the States, was not only wanting in his duty to her majesty, and to his oath, and the great trust reposed in him, in not advising, as he ought to have done, her sacred majesty to have hearkened to the said several instances made to her; but persisting in his desperate and destructive measures for the advancement of the interest of the common enemy, did afterwards advise her majesty to disregard and reject the same; and did countenance, encourage, advise, and promote the said private, separate, and wicked negociations with France, without any participation of the allies, contrary to all her majesty's engagements and to the apparent ruin of the common cause. By which several wicked and perfidious counsels, the progress of the victorious arms of the confederates were stopped, and an opportunity lost for conquering the enemy, the most favourable, in the opinion of all the general officers and the quarter-masters of the allies, who were sent out to view the French camp, and whereby all hopes of confidence between her majesty and her allies was entirely destroyed, and the French king made absolute master of the negociations of peace, and the affairs of Europe given into his hands.

ARTICLE IX.

That to impose upon the allies the fatal necessity of submitting to the terms of France, and in order thereto to leave the whole confederate army at the mercy of the common enemy, he the said Robert earl of Oxford and earl Mortimer, was privy and consenting to a secret and separate concert with the ministers of France, without the knowledge of the allies, for the separating the troops in her majesty's pay from the rest of the confederate army: For the effecting whereof, instead of preventing as far as in him lay so fatal a step, he was not only wanting to advise against so unwarrantable a proceeding, but did consent to and advise her majesty, that the duke of Ormond, and all the troops then in her majesty's pay, or such of them as would obey his orders, should separate themselves from the army of the confederates: And having notice that the generals of the auxiliaries, paid by her majesty, whose honour and consciences would not permit them to abandon the confederates, and leave them as a sacrifice to France, but for the sake of the common interest of Europe, and according to the true end and design of their conventions, did refuse to withdraw with the duke of Ormond, without particular orders from their respective masters; he the said Robert earl of Oxford and earl Mortimer, being then lord high-treasurer of Great Britain, and one of her majesty's most honourable privy council, in violation of his oath, and the duty and trust reposed in him, did take upon himself an arbitrary and illegal power, to refuse and put a stop to the pay and subsidies due on account of the said foreign troops, although they were entitled thereto by the conventions entered into with her sacred majesty, and by express provision made by act of parliament for the payment of the same. By which fatal separation, which pursuant to his evil counsels was afterwards made, great numbers of the confederate troops, who had before, on many occasions,

signalized themselves in the defence of the cause of Europe, soon afterwards, at the unfortunate action of Denain, fell as sacrifices to the fury and revenge of France; the siege of Landrecy was raised, the important towns and fortresses of Quesnoy, Bouchain, and Doway, were retaken by the French army: and not only the fortune of the war, but the fate of Europe decided in favour of France.

ARTICLE X.

That in further execution of his pernicious designs to complete the destruction of the common cause of Europe, and to render it impracticable for her majesty to resume the war against France, in conjunction with her allies, or to recover the union with her majesty's old and faithful allies, so necessary to the preservation of these kingdoms; he the said Robert earl of Oxford and earl Mortimer, then lord high treasurer of Great Britain, did carry on and concert with the ministers of France a private and separate negociation for a general suspension by sea and land, between Great Britain and France; and to that end among others, did advise her majesty to send over Henry viscount Bolingbroke, one of her principal secretaries of state, to the court of France with powers to settle the said suspension. In pursuance of which, a destructive Treaty of Suspension was made in France, on the 19th of August, N. S. 1712, by the said Henry viscount Bolingbroke, on the part of her said majesty, for four months, without the knowledge or any participation of the allies; and before any terms of peace were settled with the enemy, either for Great Britain or the allies. By which evil counsels, the express terms of several of the afore-mentioned treaties were expressly contravened and broken, the good friends and ancient allies of her majesty and these kingdoms were totally deprived of the just assistance to which they were thereby entitled, and were left exposed to the insults of the common enemy; and the sacred ties of union and friendship between her majesty and her allies being cut asunder, her majesty's person and government, the safety of her kingdoms, and of the Protestant Succession to the crown of these realms, were left exposed to the enterprizes of her most formidable enemy.

ARTICLE XI.

That whereas the States-General of the United Provinces were, in or about the months of September or October, in the year of our Lord 1712, in possession of the strong and important town and fortress of Tournay: and whereas the French king had, during the course of the said private, separate, and traitorous negociation between him the said Robert earl of Oxford and earl Mortimer, and others, and the ministers of France, signified his consent to the ministers of Great Britain, that the said town and fortress of Tournay should remain to the said States-General as part of their barrier: and whereas her majesty, in her instructions of December the 23d, 1711, to her plenipotentiaries, at Utrecht, had expressly directed them to insist with the plenipotentiaries of France, in the General Congress, that towards forming a sufficient barrier for the States-General, Tournay should remain to their high mightinesses; and did afterwards declare herself conformably thereunto, in her Speech to both Houses of Parliament, on the 6th of June, 1712, in which she communicated to them the terms whereon a peace might be made. And whereas for several years before, and till the said months of September and October, in the year of our Lord 1711, there was open war between her late majesty and the French king; and the said war continuing for all the said time, and afterwards, the said French king and his subjects were enemies to her majesty: he the said Robert earl of Oxford and earl Mortimer, then lord high-treasurer of Great Britain, and a subject of her majesty's, not considering the duty of his allegiance, but having altogether withdrawn the cordial love, and true and due obedience, which every true and faithful subject owed to her said majesty; and designing to give aid and succour, and to adhere to the said French king, did in or about the months of September or October, 1712, during the said war, falsely, maliciously, wickedly, and traitorously aid, help, and assist, and adhere to the French king, then an enemy to her late majesty: and in execution and performance of his aiding, assisting, and adhering, maliciously, falsely, and traitorously did counsel and advise the said enemy, in what manner and by what methods the said important town and fortress of Tournay, then in the possession of the States-General, might be gained from them to the French king, contrary to the duty of his allegiance, and the laws and statutes of this realm.

ARTICLE XII.

That whereas her late majesty queen Anne, not only in pursuance of the Treaties she stood engaged in to her good allies, and in particular to his imperial majesty, for the recovery of the monarchy of Spain to the House of Austria, thereby to preserve a due balance of power in Europe, but also from her just resentment against the duke of Anjou, who then stiled himself king of Spain, and who, in defiance of her majesty's title to the crown, acknowledged the Pretender as king of Great Britain; and on these just foundations her majesty had, in vindication of the honour of the crown, and in justice to her people, at a vast expence of blood and treasure, and on the earnest and repeated advices of her parliament, prosecuted a vigorous war against the duke of Anjou: and whereas, in the years of our Lord 1710, 1711, and 1712, the said open, bloody, and expensive war was carried on between her said late majesty queen Anne and the said duke of Anjou, and during all the time aforesaid, the said war did continue, and for all that time the said duke of Anjou, and the subjects of Spain adhering to

him, were enemies of her late majesty: he the said Robert earl of Oxford and earl Mortimer, then lord high-treasurer of Great-Britain, and one of her majesty's privy-council, and a subject of her said majesty, not considering the duty of his allegiance, but having withdrawn his true obedience from her said late majesty, did at several times, in the said years of our Lord 1710, 1711, and 1712, falsely, maliciously, wickedly, and traitorously aid, help, assist, and adhere to the said duke of Anjou, then an enemy to her said late majesty; and in the execution and performance of his said aiding, helping, assisting, and adhering, and in confederacy and combination with the then enemies of her late majesty, and with divers other wicked and evil disposed persons, did, at several times, in the years aforesaid, advise and counsel the enemies of her late majesty, and in such counselling and advising, did concert with them, and did promote the yielding and giving up Spain and the West-Indies, or some part thereof, to the said duke of Anjou, then in enmity with her majesty, against the duty of his allegiance, and the laws and statutes of this realm.

ARTICLE XIII.

That whereas the riches, power, and strength of these kingdoms depend entirely on the flourishing condition of trade and navigation, and her late majesty queen Anne having due regard thereto, as well as to the just expectations of her people, after the vast expences they had so cheerfully undergone in support of the war, did, on the first opening the conferences for a general peace, declare from the throne to both Houses of Parliament, on the 7th of December, 1711, that she would endeavour, that after a war which had cost so much blood and treasure, the nation might find their interest in trade and commerce improved and enlarged by a peace: and on the 6th of June, 1712, when she was pleased to communicate the terms on which a general peace might be made, did declare, that nothing had moved her majesty from steadily pursuing the true interest of her own kingdoms, and that the terms of peace obtained for her own subjects were such, as she had reason to expect would make her people some amends for the great and unequal burden which they had laid under through the whole course of the war; and hoped that none of the confederates would envy her share in the glory and advantage of the peace; and afterwards declared to both Houses of Parliament her satisfaction in the near view she had of a peace; since it would, in some measure, recompense her subjects for the vast expence: and after the conclusion of the Treaty of Peace and Commerce with France, did declare from the throne, on the 9th of April, 1713, that the many advantages she had obtained for her subjects, had occasioned much opposition and long delays to the peace; but it afforded her great satisfaction, that her people will have it in their power, by degrees, to repair what they had suffered during so long and burthensome a war. Whereupon both Houses of Parliament did from time to time express their grateful acknowledgments to her majesty for her great care and concern for the welfare of her people. And whereas at the setting on foot, and the progress of the said private, separate, and pernicious negociations between the ministers of Great Britain and France, it was laid down as a principle, on the part of Great Britain, never to be departed from, that France should consent to adjust the interests of Great Britain in the first place, that the ministers of Great Britain might thereby be enabled to engage the queen to make the conclusion of the general peace easy to France; and on this plausible pretence it was insisted on by the ministers of Great Britain, to remit the discussion of the particular interests of the allies to general conferences; and throughout the whole course of the said separate negociation, all imaginable concessions were not only made by the ministers of Great Britain for a real advantage of the interests of France against the allies, but all measures were entered into and concerted between them, that even the ministers of France could dictate, in order to strengthen their hands, and to enable them to impose the terms of a general peace: he the said Robert earl of Oxford and earl Mortimer, having nothing in view through the whole course of the said negociation, wherein he was wickedly and principally engaged in concert with France, but the final destruction of his country; and to that end the sacrificing the commerce of Great Britain to the aggrandisement of France, was not only wanting in his duty to her majesty in not insisting on in all events, and not procuring, in the first place, the most certain and strict securities imaginable for the safety and advantage of the commerce of these kingdoms; but did advise her late majesty, that in the proposition sent by his privity and advice, by Mr. Prior to France, and also in the said private and separate Treaty, signed on the 27th of September, 1711, wherein the preliminary demands for Great Britain, more particularly were intended to be adjusted with France, the demands for Great Britain, in point of commerce, should not only be made in loose, general, and insufficient terms, but that the liberty of fishing, and drying of fish on Newfoundland, should be expressly given up to France, though the restitution of that small part of the island, which France had taken during the war, was therein referred to be discussed to general conferences. And having, by his wicked artifices, engaged her majesty in the said private Treaty with France, without any security for the commerce of Great Britain, he did artfully and cunningly contrive with the ministers of France to keep in suspense all matters that concerned the commerce of Great Britain, until, by means of his wicked and pernicious counsels aforementioned, France was become masters of the negociations, and the chief advantages for the commerce of Great Britain by that means remaining unsettled: and the ministers of France afterwards disput-

ing the most essential Articles which had been in agitation, and in particular that fundamental principle of treating and being treated as *Gens Amicissima*, and endeavouring to elude what had been agreed on in the said private and separate negociation, for the supposed advantage of Great Britain; he the said Robert earl of Oxford and earl Mortimer, under pretence of removing a difficulty then depending, by an expedient advantageous to Great Britain, did treacherously advise the ninth Article of the Treaty of Commerce with France, a Bill for the rendering whereof effectual was afterwards rejected by the House of Commons, as highly prejudicial and destructive to the commerce of these kingdoms: but yet for the sake of gaining that destructive Article for Great Britain, as if the same had been advantageous, he the said Robert earl of Oxford and earl Mortimer, in defiance of the express provision of an act of parliament, as well as in contempt of the frequent and earnest representations of the merchants of Great Britain, and of the commissioners for trade and plantations, did advise her majesty finally to agree with France, that the subjects of France should have liberty of fishing and drying fish on Newfoundland; and did also advise her majesty to make a cession to France of the isle of Cape Breton, with liberty to fortify the same, although the isle of Cape Breton was part of the ancient territories of the crown of Great Britain; and her majesty had declared from the throne, that France had consented to make an absolute cession of Nova Scotia, or Acadia, whereof Cape Breton is part, to her majesty. And the said Robert earl of Oxford and earl Mortimer, intending in all events to secure to France the advantages relating to the fishery of Newfoundland and to Cape Breton, did, in conjunction with the ministers of France, advise her majesty to consent, that the same should be made an Article in the Treaty of Peace between Great Britain and France: whereas the only advantages in trade, pretended to be stipulated for Great Britain, being inserted in the Treaty of Commerce, were to depend on certain conditions to be made good by act of parliament; and pursuant to, and by the influence of the said evil counsel of him the said Robert earl of Oxford and earl Mortimer, her sacred majesty was advised to ratify the said Article in the said Treaty of Peace and the said Treaty of Commerce. By means of which pernicious counsels, the good intentions of her sacred majesty to have obtained for her people advantageous terms of commerce were entirely frustrated, the trade and manufactures of Great Britain, as far as in him lay, rendered precarious, and at the mercy of the enemy, and that beneficial branch of trade, always esteemed the great support of the naval power, and the chief nursery of the seamen of Great Britain, yielded up to the subjects of France: and the only pretence for the avowed and notorious violation of treaties, and the carrying on the measures of France, viz. the adjusting first the interests of Great Britain, through the whole course of the said private and separate negociations, terminated at last in the sacrifice of the commerce of Great Britain to France without the least shadow of advantage in trade procured for these kingdoms.

ARTICLE XIV.

That he the said Robert earl of Oxford and earl Mortimer did, in concert with other evil and false counsellors, even without any application from his royal highness the duke of Savoy, and after the French king had, in the course of the said private and separate negociations, consented that the kingdom of Sicily should remain to the House of Austria, form a project and design to dispose of the kingdom of Sicily to the duke of Savoy from the House of Austria: And to effect that his unjust, dishonourable, and pernicious project, he did advise her majesty to give instructions, among other things, to Henry viscount Bolingbroke, then appointed her ambassador to France, to demand in her majesty's name of the French king, the kingdom of Sicily for his said royal highness. And a Treaty of Peace being afterwards made between the French king, his royal highness, and the duke of Anjou, wherein a cession is made to his royal highness of the kingdom of Sicily, without any concurrence or participation of his imperial majesty; he the said Robert earl of Oxford and earl Mortimer did basely and scandalously advise her sacred majesty to consent to the same, by an Article inserted in the Treaty of Peace between her majesty and the French king. And afterwards, by his privity and advice, her majesty was prevailed on to assist his royal highness against the emperor then in alliance with her majesty, with a part of her royal fleet at her own expence, in order to put him in possession of the said kingdom of Sicily. Whereby the greatest injustice was done to his imperial majesty, in direct violation of the Grand Alliance, and contrary to her majesty's frequent declarations from the throne, and her plain and full instructions to her plenipotentiaries at Utrecht, for obtaining his just and reasonable satisfaction; and whereby national faith, and the honour of the crown, was vilely betrayed, and the naval power of these kingdoms, and the supplies granted by parliament for reducing the common enemy, were perfidiously employed against the great and faithful allies of this kingdom.

ARTICLE XV.

That whereas the dignity and support of the imperial crown of these realms has in all ages greatly depended on the wisdom and truth of the communications made from the throne, especially in parliament, as the sure and only means whereby the kings and queens of this realm can receive the sincere and faithful advice of their people in matters of the highest importance, and which by the fundamental laws and constitution of this government ought to be inviolably observed as the sacred band of the

duty and affection of subjects to their sovereign. And whereas by the most ancient and known laws of this kingdom it is indispensably incumbent on the great officers of state that surround the throne, to maintain as far as in them lies the sacredness of the royal word on all occasions; it being most apparent that the greatest dishonour to the throne, and the greatest danger to these kingdoms must inevitably ensue, whenever that fountain of truth by wicked counsels shall be in any degree corrupted, and thereby lose its just influence and necessary authority. And whereas the power of making peace and war, one of the ancient, undoubted, and most important prerogatives of the crown, has been always exercised by the sovereigns of these realms, with the strictest regard to the honour of the crown and the welfare of the people; and for that end they have in great wisdom in all ages taken the advice of parliament on such weighty occasions. And whereas her late majesty queen Anne declared from the throne her gracious intentions to communicate the terms of peace to her parliament, for their deliberate and serious advice therein, wisely foreseeing that the safety of her person and government, of the Protestant Succession to the crown, which she had nearest her heart, and of the Protestant religion, and of the liberties of Europe, did inevitably depend on the happy conclusion of the said negociations: He the said Robert earl of Oxford and earl Mortimer, then lord high-treasurer of Great Britain, having taken on himself throughout the said negociations a most arbitrary and unwarrantable authority, and the chief direction and influence to her majesty's councils; and most wickedly designing to prostitute the honour of the crown, and the dignity of parliaments, and not only totally to deprive her majesty of the wholesome and necessary advice of her parliament in so great a conjuncture, but by misrepresenting the most essential parts of the negociations of peace, to obtain the sanction of parliament to his traitorous proceedings, and thereby fatally to deceive her majesty, her allies, her parliament, and her people; he the said Robert earl of Oxford and earl Mortimer was not only wanting in the discharge of that duty to his sovereign which became his high station, by no tadvising against, and as far as in him lay in all events by not preventing even any intimation from the throne to the parliament, which was not conformable to the exactest truth and impartiality; but taking advantage of his ready access to her majesty, and his exorbitant influence on her councils, did prepare, form, and concert together with other false and evil counsellors, several speeches and declarations to be made by her majesty from the throne to her parliament, on the subject of the said negociations of peace, and did advise her majesty to make the same to her parliament: And particularly by means of his false and evil counsels, her majesty did, amongst other things, on the seventh of December, 1711, declare from the throne in the words, or to the effect following: "That notwithstanding the arts of those who delight in war, both place and time are appointed for opening the Treaty of a general peace. Our allies, especially the States-General, whose interest I look upon as inseparable from my own, have by their ready concurrence expressed their confidence in me." Whereas it was then notorious to all Europe, and the said Robert earl of Oxford and earl Mortimer, and others his accomplices, well knew, that the principal allies of her majesty, and particularly the States-General, then had in the strongest and most pressing manner represented not only to her majesty's ministers in Holland, but afterwards by a minister of their own directly to her majesty, the insecurity and danger to the common cause, by entering into general negociations with France on the propositions signed by monsieur Mesnager; and also their firm opinion of the fatal consequences that might ensue thereon: And although they had still great apprehensions concerning the method of opening the conferences, and the consequences that might happen thereupon; yet being wrought on by the menaces and other extraordinary methods used with them by her majesty's ministers, and relying on the solemn assurances and declarations of her majesty to support the interest and concern of their state, and to act in perfect confidence and harmony with them; they did at last; with the greatest reluctance, consent to enter upon a general negociation of peace with France. And in the same Speech her majesty was prevailed on by the evil counsels of him the said Robert earl of Oxford and earl Mortimer, and others, to declare in the words, or to the effect following: "That the princes and states which have been engaged with us in this war, being by treaties entitled to have their several interests secured at a peace; I will not only do my utmost to procure every one of them all reasonable satisfaction, but I shall also unite with them in the strictest engagements for continuing the alliance, in order to render the general peace secure and lasting." And in her Message of the 17th of January following, her majesty again expresses the care she intended to take of all her allies, and of the strict union in which she proposed to join with them: Whereas by the evil influence of him the said Robert earl of Oxford and earl Mortimer, her majesty was not only induced to enter into a private negociation with France, exclusive of her allies; but the same was in like manner carried on by him the said Robert earl of Oxford and earl Mortimer, and others. And the several interests which the allies were entitled to by their treaties, were not only not secured to them by the peace, nor any reasonable satisfaction given to them, but the main interests of her principal allies, especially of his imperial majesty, were by the wicked practices of him the said Robert earl of Oxford and earl Mortimer, and others, given up to France; and no engagements were obtained for continuing the alliance, in order to render the general peace

secure and lasting. And her majesty having on many former occasions expressed her resolutions never to make peace with France and Spain, so long as Spain and the West Indies remained in the House of Bourbon; she was prevailed upon by the advice of him the said Robert earl of Oxford and earl Mortimer, and others, to declare herself, in answer to an Address of the House of Peers, the 11th of December, 1711, to the effect following, viz. "I should be sorry any one could think I would not do my utmost to recover Spain and the Indies from the House of Bourbon. Whereas it is most manifest, that the leaving the kingdom of Spain and the Indies in the House of Bourbon, was the foundation of the private and separate Treaty between Great Britain and France, which had been before that time signed even with her majesty's consent; and the same fundamental resolution was immutably observed between them to the conclusion of the peace. And her majesty having frequently declared from the throne, that her resolutions in entering into the said negociations were to obtain a general, good, and lasting peace, and the plenipotentiaries at Utrecht being instructed to treat with France conformably to that end, he the said Robert earl of Oxford and earl Mortimer, in order to remove the just suspicions which had been conceived of his private and separate negociations with France, did advise her majesty to make this further declaration in her said Message of the 17th day of January, "that the world will now see how groundless those reports are which have been spread abroad by men of evil intentions to serve the worst designs; as if a separate peace had been treated, for which there has not been the least colour given:" Whereas a private and separate negociation had been carried on for five months together between Great Britain and France; and during that time private propositions had been sent from England, and a private Treaty with a minister of France signed, even by her majesty's privity, exclusive of all the allies, before the said declaration made by her majesty: And private and separate measures were thenceforth carried on by the said Robert earl of Oxford and earl Mortimer, and his accomplices, on behalf of her majesty, with the ministers of France, even to the conclusion of the peace with France. Her majesty was further prevailed on by the wicked advice of him the said Robert earl of Oxford and earl Mortimer, in her Speech of June the 6th, 1712, to declare, "that to prevent the union of the two crowns, she would not be content with what was speculative, but insisted upon something solid:" And in the same Speech to the effect following, viz. "the nature of the proposal for a renunciation is such, that it executes itself, and France and Spain are thereby more effectually divided than ever:" Whereas the ministers of France had before that time assured the ministers of her majesty, that to accept of the expedient proposed on her majesty's behalf, would be to build on a sappy foundation; and that the renunciation would be null and void by the fundamental laws of France; and that they would deceive themselves who accepted it as an expedient to prevent the union of the two crowns. And not only in the particulars beforementioned, but in many others contained in the said several Speeches and Messages made and sent to her parliament, even while the said negociations of peace with France were depending, the most essential points relating to peace and commerce, and which concerned the interest, as well of the allies as of Great Britain, were grossly misrepresented. By all which wicked, treacherous, and unexampled evil counsels, he the said Robert earl of Oxford and earl Mortimer did most basely, ungratefully, and scandalously abuse the favour of his royal mistress, and by means of her authority did mislead her parliament into groundless and fatal resolutions; and thereby not only prevented the just advice of the parliament to her majesty in that critical juncture, but obtained the approbation of parliament to his mysterious and dangerous practices; and did not only deprive her majesty of the confidence and affection of her allies, but exposed her majesty and her people to the contempt of the common enemy.

ARTICLE XVI.

That whereas the said Robert earl of Oxford and earl Mortimer having on all occasions used his utmost endeavours to subvert the ancient established constitution of parliaments, the great and only security of the prerogative of the crown, and of the rights, liberties and properties of the people, and being most wickedly determined at one fatal blow as far as in him lay to destroy the freedom and independency of the House of Lords, the great ornament and nearest support of the imperial crown of these realms, and falsely intending to disguise his mischievous purposes under a pretended zeal for the prerogative of the crown; he the said Robert earl of Oxford and earl Mortimer, on or about the months of December or January, 1711, whilst the House of Lords were under an adjournment, and had reason to expect that on their next meeting matters of the highest importance would be communicated to them from the throne, they having some few days before given their humble opinion and advice to her majesty, that no peace could be safe or honourable to Great Britain or Europe, if Spain and the West Indies were to be allotted to any branch of the House of Bourbon; being then lord high treasurer of Great Britain, and one of her majesty's privy council, and assuming to himself an arbitrary direction and controul in her majesty's councils, contrary to his duty and his oath, and in violation of the great trust reposed in him, and with an immediate purpose to render ineffectual the many earnest representations of her majesty's allies against the said negociations of peace, as well as to prevent the good effects of the said advice of the House of Lords; and in order to obtain such further resolutions of that House of Parliament on the

important subject of the negociations of peace, as might shelter and promote his secret and unwarrantable proceedings, together with other false and evil counsellors, did advise her majesty to make and create twelve peers of this realm, and lords of parliament,* and pursuant to his destructive counsels letters patents did forthwith pass, and writs issued, whereby twelve peers were made and created; and did likewise advise her majesty immediately to call and summon them to parliament; which being done accordingly, they took their seats in the House of Lords on or about the 2nd of January, 1711, to which day the House then stood adjourned. Whereby the said Robert earl of Oxford and earl Mortimer did most highly abuse the influence he then had with her majesty, and prevailed on her to exercise in the most unprecedented and dangerous manner that valuable and undoubted prerogative, which the wisdom of the laws and constitution of this kingdom hath entrusted with the crown for the rewarding signal virtue and distinguished merit. By which desperate advice he did not only, as far as in him lay, deprive her majesty of the continuance of those seasonable and wholesome counsels in that critical juncture, but wickedly perverted the true and only end of that great and useful prerogative to the dishonour of the crown, and the irreparable mischief to the constitution of parliaments. All which crimes and misdemeanors were committed and done by him the said Earl against our late sovereign lady the queen, her crown and dignity, the peace and interest of this kingdom, and in breach of the several trusts reposed in him the said Earl, and he the said earl of Oxford and earl Mortimer was lord high treasurer of Great Britain, and one of her majesty's privy council, during the time that all and every the crimes before set forth were done and committed. For which matters and things, the knights, citizens and burgesses of the House of Commons in parliament assembled, do, in the name of themselves and of all the Commons of Great Britain, impeach the said Robert earl of Oxford and earl Mortimer of High Treason, and other High Crimes and Misdemeanors in the said Articles contained. And the said Commons by protestation saving to themselves the liberty of exhibiting at any time hereafter, any other accusations or impeachment against the said Earl, and also of replying to the Answers which the said Robert earl of Oxford and earl Mortimer shall make to the premises, or any of them, or any impeachment or accusation that shall be by them exhibited, according to the course and proceedings of parliament, do pray that the said Robert earl of Oxford and earl Mortimer be put to answer all and every the premises; and that such proceedings, examinations, trials and judgments may be upon them, and every of them, had and used, as shall be agreeable to law and justice. And they do further pray and demand, that the said Robert earl of Oxford and earl Mortimer may be sequestered from parliament, and forthwith committed to safe custody.

After these Articles were delivered and debated upon, a motion was made, that the earl of Oxford might be committed to safe custody, when his lordship spoke to this effect:

"My lord;

"It is a very great misfortune for any man to fall under the displeasure of so great and so powerful a body as the Commons of Great Britain; and this misfortune is the heavier upon me, because I had the honour to be placed at the head of the late ministry, and must now, it seems, be made accountable for all the measures that were then pursued: but on the other hand, it is a very great comfort to me under this misfortune, that I have the honour to be a member of this august assembly: an assembly which always squares their proceedings and judgments by the rules of honour, justice and equity; and is not to be biassed by a spirit of party.

"My lord, I could say a great deal to clear myself of the Charge which is brought against me: but as I now labour under an indisposition of body, besides the fatigue of this long sitting, I shall contract what I have to say within a very narrow compass. This whole accusation may, it seems, be reduced to the negociation and conclusion of the peace. That the nation wanted a peace, nobody will deny; and I hope it will be as easily made out, that the conditions of this peace are as good as could be expected, considering the circumstances wherein it was made, and the backwardness and reluctancy which some of the allies shewed to come into the queen's measures. This is certain, that this peace, as bad as it is now represented, was approved by two successive parliaments. It is indeed suggested against this peace, that it was a separate one; but I hope, my lord, it will be made appear, that it was general; and that it was France and not Great Britain, that made the first steps towards a negociation. And, my lord, I will be bold to say, that during my whole administration, the sovereign upon the throne was loved at home, and feared abroad.

"As to the business of Tournay, which is made a capital charge, I can safely aver, that I had no manner of share in it; and that the same was wholly transacted by that unfortunate nobleman who thought fit to step aside: but I dare say in his behalf, that if this charge

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* As to the increase of the Peerage, see sir William Temple's Works, vol. 1, p. 268, fol. edit. Essay on Popular Discontents. Debates on the Bill for limiting the number of the Peerage, and De Lolme on the Constitution; sir Robert Walpole's "Thoughts of a Member of the Lower House in relation to a Project for restraining and limiting the Power of the Crown, and the future Creation of Peers;" and the "Remarks on a Pamphlet, entitled, Thoughts of a Member of the Lower House," &c. said to be written by lord Peterborough.

could be proved, it would not amount to treason. For my own part, as I always acted by the immediate directions and commands of the late queen, and never offended against any known law, I am justified in my own conscience, and unconcerned for the life of an insignificant old man. But I cannot, without the highest ingratitude, be unconcerned for the best of queens: a queen who heaped upon me honours and preferments, though I never asked for them; and therefore I think myself under an obligation to vindicate her memory, and the measures she pursued, to my dying breath. My lord, if ministers of state, acting by the immediate commands of their sovereign, are afterwards to be made accountable for their proceedings, it may one day or other be the case of all the members of this august assembly: I do not doubt, therefore, that out of regard to yourselves, your lordships will give me an equitable hearing; and I hope that, in the prosecution of this enquiry, it will appear, that I have merited not only the indulgence, but likewise the favour of the government. My lord, I am now to take my leave of your lordship, and of this honourable House, perhaps for ever! I shall lay down my life with pleasure, in a cause favoured by my late dear royal mistress. And when I consider that I am to be judged by the justice, honour and virtue of my Peers, I shall acquiesce, and retire with great content: and, my lords, God's will be done!"

Further Articles of Impeachment of High Crimes and Misdemeanors against Robert Earl of Oxford and Earl Mortimer.

Article I.

That whereas in or about the month of January, in the year 1710-11, a dangerous and destructive expedition had been projected and set on foot, under pretence of making a conquest on the possessions of the French king in North America, but with a real design to promote his interests, by weakening the confederate army in Flanders, and dissipating the naval force of this kingdom, as well as for the sake of the private interests and corrupt gain of the promoters of the said expedition, he the said Robert earl of Oxford and earl Mortimer, being then one of her late majesty's privy council, and one of the commissioners of her majesty's treasury, was not only wanting in his duty to her late majesty, by wilfully and industriously absenting from the meetings of other persons then in high trust under her majesty, wherein the said expedition was concerted, and by not advising her majesty against, and doing what in him lay to have prevented the putting the same in execution, but did, contrary to his oath, and the high trust then reposed in him, advise her majesty to consent to the making an expedition for the conquering Canada, and the city of Quebec on the river of St. Laurence in North America; and in execution of his said evil counsels, he did further advise her majesty to give orders for detaching several battalions of the forces then in the service of her majesty, in conjunction with her allies in Flanders, and to send the same with a large squadron of men of war on the said enterprize; although the said Robert earl of Oxford and earl Mortimer well knew, that the said project or expedition having been frequently deliberated on and maturely considered, a short time before, in a committee of council, was then laid aside as dangerous and impracticable. And a demand being made at the treasury on or about the months of May or June, 1711, for the sum of 28,000*l.* or thereabouts, on pretence of arms and merchandize said to be sent on the said expedition to Canada, he the said Robert earl of Oxford and earl Mortimer being then lord high treasurer of Great Britain, and one of her majesty's privy council, though he well knew, or had reason to suspect, that the same was an unjust and exorbitant demand, and a great abuse on her majesty and the public, and such as ought not to have been complied with, was not only wanting in his duty to her majesty, in not giving his humble advice against the said demand, or at least in not representing to her majesty the grounds of such his suspicion, but did, contrary to his oath and his duty, advise her majesty, that the said sums should be issued and paid; and did accordingly countersign a warrant to the paymaster of her majesty's forces for the payment of the same, pursuant to which the same was issued and received. And in further violation of his oath, his duty, and trust, and with the most corrupt design to prevent the justice due to her majesty and the nation, he the said Robert earl of Oxford and earl Mortimer, being then lord high treasurer of Great Britain, and exercising a most unexampled arbitrary power, not only in her majesty's private councils, but extending his evil influences to the great council of the nation; after the said expedition had proved unsuccessful, and it had been discovered to him the said Robert earl of Oxford and earl Mortimer, that the nation had been cheated of above 20,000*l.* on that account, did most ungratefully and corruptly employ his wicked arts, and the credit which he had gained by his many false and crafty insinuations and practices, to keep the House of Commons from examining that affair. And in or about the month of August, 1714, in a letter or memorial under his hand to her late majesty, he did presume, not only to insinuate the ill opinion he therein pretended always to have had of the said expedition, but did declare the suspicions he had of the great injury and abuse done to her majesty and the public, in the demand of the said 28,000*l.* even at the time when the same was made, and that the public had been cheated of above 20,000*l.* on that account; and in the said memorial did presume further to declare to her majesty, that he was forced to use all his skill and credit

to keep the House of Commons from examining that affair in the last parliament; thereby vainly, but most wickedly, recommending himself to the continuance of her majesty's favour, by the success of his most profligate measures. By all which unparalleled corruptions and most dangerous counsels and practices of him the said Robert earl of Oxford and earl Mortimer, the good and faithful allies of her majesty were deprived of the aid of her majesty's troops, to which they were entitled by their conventions, and the confederate army in Flanders was greatly diminished, to the apparent advantage of the common enemy: the public money, granted by parliament for reducing the power of France, and which was expressly appropriated for other special services, was arbitrarily and illegally misapplied and embezzled, and an heavy debt incurred on the nation, not only sitting the parliament, but even in contempt and defiance of a representation made by the House of Commons to the throne, even whilst the said expedition was concerting; and whereby the highest injustice was done, in suppressing an enquiry so just to her majesty and her people, and a lasting reproach and scandal brought on that House of Commons, of which he boasts, as having been wrought on by his corrupt influence not to examine into so high and so scandalous an abuse.

ARTICLE II.

That the said Robert earl of Oxford and earl Mortimer, not contented with the high employments and places of honour and profit bestowed on him by her late majesty, nor with the large and excessive gains by him made by the incomes and profits of the said employments, on or about the month of October 1711, whilst the nation was engaged in a most expensive war against France and Spain, for preserving the liberties of Europe, and greatly exhausted with the supplies and taxes for carrying on the same, and was under such heavy debts as were impossible to be satisfied, without the utmost frugality or laying grievous taxes upon the Commons of Great Britain: contrary to his oath and his high trust, and making a most dishonourable and ungrateful use of the ready access he had to her late majesty, did prevail on and advise her majesty to sign a warrant to himself, being then lord high-treasurer of Great Britain, for the issuing and payment of the sum of 13,000*l.* to John Drummond, esq. or his assigns, for such special services relating to the war, as her majesty had directed: and the said Robert earl of Oxford and earl Mortimer, on or about the 24th day of November following, in pursuance of the said warrant under her majesty's sign manual, did sign a warrant for the payment of the said 13,000*l.* for such special services of the war, as her majesty had directed; although no special services had been, or were at any time afterwards directed by her majesty, to which the said monies were to be applied. And the said Robert earl of Oxford and earl Mortimer, having privately desired leave of the said Drummond to strike some tin-tallies in his the said Drummond's name, he did, pursuant thereto, direct that orders amounting to the sum of 13,000*l.* should be charged in the register of the exchequer on the monies arising by sale of tin, in the name of the said John Drummond; and though the same were accordingly struck in the name of the said Drummond, in or about the month of November, 1711, they were not delivered out to the said Drummond, but were kept in the treasury chamber, or else were in the power or custody of the Earl, till about the end of January following, when the said Drummond having occasion, as the said Robert earl of Oxford and earl Mortimer well knew, to go into Holland, at the desire and request of the said Earl, he indorsed his name on the said orders, and the same were left, by his privity, direction, or consent, in the hands of Mr. John Taylor, a clerk of the treasury; and the said Robert earl of Oxford and earl Mortimer having afterwards got possession of the said orders, did in or about the month of June, 1712, send an order in writing to the said Mr. Taylor to deliver the said tallies to a servant of the said Earl, which was done accordingly, the said indorsements not being at that time filled up: and the said Robert earl of Oxford and earl Mortimer, having by these corrupt and scandalous methods got the said tallies and orders into his own hands, did afterwards fill up assignments of the said orders for 12,000*l.* part of the said 13,000*l.* to himself, and the remaining part to such other persons as he thought fit; and did afterwards in or about the months of August, October, and November, 1713, at several times, dispose of the said orders and tallies to his own private use and advantage. And to cover the said scandalous embezzlements, he the said Robert earl of Oxford and earl Mortimer did afterwards, as he pretends, advise and prevail on her majesty, on or about the 14th of December, 1713, to sign a warrant prepared by himself, wherein after the recitals of his own good, faithful, and acceptable services, which had tended to the quiet, safety, and prosperity of her majesty and her realms, though accompanied with great difficulties on himself, and hazards to him and his family; and that her majesty was resolved to bestow upon him a sum of ready money: but the said Earl representing to her majesty, that the arrears then due to her servants and tradesmen were very great and pressing, her majesty did therefore agree and determine that he should have, to his own use, the said several sums, amounting to 13,000*l.* comprized in the orders aforesaid: It was directed that the said John Drummond should assign the said orders, and the whole right and benefit thereof to the said Earl and his assigns; although the said Earl had privately and clandestinely procured from the said Drummond an assignment of the said

orders near two years before the said warrant, and had fraudulently and corruptly disposed and converted them to his own use, without her majesty's privity or consent, some time before her majesty was prevailed on to sign the said warrant. And though the last-mentioned warrant, if any such there be, was not communicated to the said Drummond by the said Earl during her majesty's life, nor was the same countersigned nor entered in the treasury, yet he the said Robert earl of Oxford and earl Mortimer, even after his said corruption had been discovered in parliament, did presume, without the privity of the said Drummond, to send the said warrant to the commissioners of his majesty's treasury, desiring that the same might then have been entered in the treasury; but the same was with great honour and justice refused to be so entered. By which most vile and scandalous corruption, he the said Robert earl of Oxford and earl Mortimer was guilty of the most notorious breach of his oath and trust, as lord high-treasurer of Great Britain, of the highest abuse of her majesty's goodness, and embezzlement of her treasure; and of the greatest injustice and oppression of other of her majesty's subjects.

ARTICLE III.

That whereas by the established and known laws of this kingdom, the allowances or appointments for the maintenance and support of ambassadors, envoys, plenipotentiaries, and other public ministers of the crown in foreign courts, ought to be ascertained in due form of law, as well in honour as in justice to the imperial crown of these realms: and whereas the said Robert earl of Oxford and earl Mortimer, in or about the months of July or August, 1712, sent Matthew Prior, esq. an instrument and creature of his own, into France, for the carrying on his separate and dangerous negociations; and did afterwards in the month of November, 1712, by his evil counsels prevail on her late majesty, without the privity of, or any communication with her allies, to send the said Matthew Prior as her majesty's plenipotentiary to the French king, with instructions to treat and conclude matters, of the highest importance, relating to the general negociations of peace: but the same was a treacherous and wicked contrivance of him the said Robert earl of Oxford and earl Mortimer, for the more effectually carrying on and promoting his private, separate and dangerous practices with the ministers of France, and the enemies of her majesty and her kingdoms; he the said Robert earl of Oxford and earl Mortimer not regarding his oath, or his high trust, or the laws of the kingdom, did most corruptly and scandalously combine with the said Matthew Prior for the defrauding her majesty of very great sums, under the colour of his said employments in France; and to that end the said Earl did contrive that the said Matthew Prior should be sent into France, with the character aforesaid, but without any settled appointments or allowances: but in the stead and lieu thereof, he the said Robert earl of Oxford and earl Mortimer did give the said Matthew Prior an unlimited credit, and did promise to answer and pay such bills as the said Prior should draw on him during his residence in France; pursuant to which contrivance and corrupt agreement he the said Matthew Prior did, between the 27th of August, in the year 1712, new stile, and the 10th of July, 1714, or thereabouts, at several times draw bills of exchange, to the amount of 12,360*l.* or thereabouts, on him the said Robert earl of Oxford and earl Mortimer, which he being then lord high treasurer of Great-Britain, did advise and prevail upon her majesty, to sign warrants for the payment of, and did countersign the same, although the said Prior was no way intitled to any such allowances by reason of his said employment, and the same greatly exceeded the allowance even of an ambassador of the crown of Great Britain. And the said Robert earl of Oxford and earl Mortimer did, in the years 1712, 1713, and 1714, without any colour or authority, but for the further promoting his corrupt and wicked purposes, prevail on and advise her majesty to sign warrants, which were countersigned by himself, for the payment of the sum of 5,560*l.* or thereabouts, to the use of Thomas Harley, esq.* a near relation and emissary of him the

* The following particulars occur in the Commons' Journal, under date August 19th, 1715.

"Mr. Walpole reported from the committee of secrecy, that the said committee having, pursuant to the orders and powers given to them by this House, proceeded to examine Thomas Harley, esq. who was sworn by such members of the said committee as are justices of peace, for the county of Middlesex, and city of Westminster; and the committee conceiving, that the said Mr. Harley had very much prevaricated in his examination, the said committee had directed, that some extracts of letters relating to the said Mr. Harley, which gave occasion to the said examination: and likewise a copy of the deposition of Mr. Harley: should be laid before the House; which he read in his place, and afterwards delivered in at the clerk's table: Where the same were read: And the said extracts of letters, and deposition, are as follows: viz.

EXTRACT of a LETTER from Mr. St. John to the Lords Plenipotentiaries at Utrecht, Feb. 16, 1711-12.

"Though I have a great deal more to say, in order to explain clearly to your lordships the present situation of the queen's domestic affairs, and the measures which she proposes your lordships should pursue towards effecting your great work, under all the difficulties which are thrown in the way, than can be contained in the compass of a reasonable letter; yet I should, by this messenger, have entered into all that

said Robert earl of Oxford and earl Mortimer, out of the monies appropriated to the use of her majesty's civil list: and did in like manner, at several times in the years aforesaid, most illegally, fraudulently, and corruptly issue, or direct or advise the direction and payment of other large sums of money, to other persons out of her majesty's treasury: by which most illegal and scandalous manage-

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detail, had not the resolution been taken, of finally instructing Mr. Harley on Monday, in the view of dispatching him on Tuesday.

"It were to be wished, that this gentleman could have been sooner sent both to Utrecht and to Hanover; but the hurry which we have been for some time in is inexpressible; and he was too useful to be spared, till the House of Commons was perfectly secured to the queen's interest, and to the measures of peace: I think, I may say, that they are absolutely so now.

"Your lordships will have this matter fully opened to you by Mr. Harley."

EXTRACT of a LETTER from the Lords Plenipotentiaries to Mr. Secretary St. John, March 5, 1712, N. S.

"Your favour, of the 16th past, under your own hand, gives us hopes of seeing Mr. Harley here very soon; and of receiving by him such orders as may enable us to fix on something more certain than hitherto we could do."

EXTRACT of a LETTER from Mr. Secretary St. John to the Lords Plenipotentiaries, March 4, 1711-12.

"I find your lordships, in the private letter of the 5th of this month, which you honoured me by Couchman, under some impatience for the arrival of Mr. Harley; and I am very far from wondering at you for it; since, in your present situation, you run the risk of having the game taken out of your hands by others, and are in no sort able to play it on, yourselves: This evil circumstance will now be very soon cured; Mr. Harley goes away to-morrow; and your lordships will be much better informed of the queen's intentions by what he will have the honour to say to you, than you could possibly have been by ten reams of written instructions."

EXTRACT of a LETTER from Mr. St. John to Monsieur de Torcy, Secretary of State to the French King, March 4, 1711-12, O. S.

"I should be ashamed, Sir, to have so long deferred answering your letters, if I did not believe I was able to allege, in my justification, a good reason; and which you will not disapprove: In a word, I was willing to write to you with certainty; and for that end, I was obliged to stay till the ministers of the emperor, and of the republic of Holland, had more openly shewed their game; till the necessary dispositions were made among our people at home; and, in short, till the queen

ment he the said Robert earl of Oxford and earl Mortimer has introduced a practice highly prejudicial to, and utterly inconsistent with the constitution of this kingdom, and of the most pernicious consequence, by opening a way for the most dangerous corruptions; and was not only guilty of a notorious breach of his oath, but entered into the most base and scandalous combinations with the persons above-men-

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had taken the only resolution, which could bring us, in a little time, to a good and solid peace.

"I have now the satisfaction to tell you, that this resolution is taken; and that Mr. Harley will set out this evening, or to-morrow morning, with the final instructions of the queen to her plenipotentiaries.

"You will give me leave to refer myself to the sieur Gaultier, to explain to you more at large the subject of this gentleman's commission; and what the queen hopes his most Christian majesty will do, to co-operate with her."

EXTRACT of a LETTER from Mr. St. John to the Lords Plenipotentiaries, March 26, 1712.

"Mr. Harley is, I make no doubt, long before this, with your lordships; and I hope he has fully explained the queen's desires and views to you; at least, he is as amply instructed in them, as I am able to inform him: The conduct of this matter is in so good hands, that I am hopeful an answerable event may be expected."

EXTRACT of a LETTER from the Lords Plenipotentiaries to Mr. St. John, April 6, 1712.

"Mr. Harley has been here these three days; and yesterday Mr. G———r came to see us, having arrived the night before."

EXTRACT of a LETTER from the Lords Plenipotentiaries to Mr. St. John, April 8, 1712.

"Our last, of the 6th, acquainted you, that some people had been disappointed, that day, in their expectations of breaking this congress; which we hope may be carried on, and produce the good effects intended.

"That evening, after we had received ample informations from Mr. Harley, and also spoken with Mr. Gaultier, we had a long conference with the French plenipotentiaries, upon the project that was sent you the 28d; whereof we again inclose a copy, with such remarks, as after all we could urge, the French ministers insisted on.

"The fifteen per cent. they will by no means allow to extend to other goods than such as come into Spain, in order to be transported into America.

"Mr. Harley thinks it may be requisite to let fall that whole pretension, and settle commerce on the foot it stood in the time of king Charles the 2nd of Spain; and that the only use we need make of the 15 per cent. is to get something for it another way; which we shall

tioned, and others, under the pretence and colour of promoting her majesty's service, to defraud her majesty of the public money, which he was entrusted with the management of for the support of the honour and dignity of the crown.

ARTICLE IV.

That whereas the revenues arising to the crown from the hereditary excise and post-office, or some parts thereof, were, by virtue of letters patents of the late king James the 2d, charged with and made liable to certain annuities or yearly sums, in trust for, or to the use of Mary, the consort of the said king James the 2d, but the said revenues were afterwards, by several acts of parliament, granted and settled for the support of the royal houshold, and of the honour and dignity of the crown; or for other public uses, without any saving or exception of the said letters patents. And whereas by an act made in the 12th year of her late majesty's reign, the sum of 500,000*l.* was granted to her late majesty for the discharge of divers arrears of salaries, diet-monies, and other allowances, and sundry debts for pre-emptions, provisions and other causes, which had been then incurred and grown due to her late majesty's servants, tradesmen and others, and were occasioned by several extraordinary expences since the Act for the better Support of her Majesty's Houshold, and of the Honour

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be glad to hear from you; for, in that case, our work with the Dutch will become a good deal easier."

COPY of the EXAMINATION of Thomas Harley, esq. taken before the Right Hon. Hugh Boscawen, esq. Comptroller of his Majesty's houshold, and one of his Majesty's Justices of the Peace for the county of Middlesex, at the Committee of Secrecy.

"The examinant saith, that when he was first sent abroad, in or about March 1711-12, he was sent by the queen's express commands, who was pleased to speak, herself, very particularly to him: That her majesty ordered the secretary of state to make such powers as were necessary to be given to him, but would make it easy to him, and without any formality: That directions were given for full powers, which this examinant left in the office, where he thought they would be most safe: That he never received any powers, nor ever saw them; but, at his own choice, went abroad without powers: That the queen ordered, that this examinant should have an account of the state of affairs, to be communicated by him to such persons as he was to discourse with abroad: That he received, from several offices, several papers, relating to the revenue, and other matters, touching the then situation of affairs; from which the queen was pleased to order him to inform himself as well as he could, that he might be able to explain himself when he went; and, in particular when he came to the Hague, he was to give the pensionary an account of the state of affairs, and to use the best arguments he could to hasten the peace: But he does not know whether he has any of those papers now by him; and does not remember, that he had any particular instructions for himself, except from those papers, but what he received from the queen's own mouth; the particulars whereof he cannot at present charge his memory with, except as above-mentioned: That he did not produce, at the Hague, or at Utrecht, any credential letters from the queen, or any of her ministers: That he had no orders to transact or negociate any thing relating to the peace, with any foreign minister; and that he did not transact, in any manner, with any foreign minister: That he did not, to his knowledge, carry over any plan, project, or scheme, of a peace; and that he did not transact any thing at Utrecht with abbot Gaultier, nor confer with him either there, or before he went from England: That he does not remember he had any orders from the queen or any of her ministers, relating to the 15*l.* per cent.; and that he doth not remember, that he did signify any orders to the queen's plenipotentiaries concerning it, and that he does not remember any thing at all about the 15*l.* per cent.: That he staid in Holland till he had the queen's order to go forward, signified by the secretary of state: That he received several letters whilst he was abroad; but from whom in particular he cannot remember; and that he wrote several letters; but to whom he cannot remember; and that he doth not know, that he has either copies, or originals, of any letters that he either wrote or received: That he had no settled allowance or appointment; but, at his first going over the first time, he spent his own money, which the queen was afterward pleased to order should be allowed him: That, the first time he went abroad, he received under 3,000*l.*; and, in both journies together, he received, in all, about 5,500*l.*; and that what he received, the queen ordered for his expences, and the trouble he had been at: That nobody negociated any money for him upon the public account, but Mr. Decker; and that he does not remember that he had any public money, but for his own expence: which did not, in the whole, exceed the sum of 5,500*l.*

"T. HARLEY."

"Jurat. 21 Junii 1715, coram me,

"HUGH BOSCAWEN."

"Ordered, That Thomas Harley, esq. now in custody of the serjeant at arms attending this House, having prevaricated when he was examined at the committee of secrecy, pursuant to the order of the 15th of June last, be committed prisoner to the prison of the Gate-house: And that Mr. Speaker do issue his warrants accordingly.

Ordered, that the report from the committee of secrecy relating to the examinations of Thomas Harley, esq. be printed.

and dignity of the Crown. And the said sum of 500,000*l.* was expressly appropriated to the uses afore-mentioned, in aid of the said revenues or branches which were appointed for the support of her majesty's houshold, and of the honour and dignity of the crown. And whereas by an Act made in the 13th and 14th years of his late majesty king William the 3d, it was enacted, that for preventing traitorous correspondence between his majesty's subjects and the pretended prince of Wales, or his adherents, that if any of the subjects of the crown of England, from and after the first day of March, 1701, should within this realm, or without, hold, entertain, or keep any intelligence or correspondence in person, or by letters, messages, or otherwise, with the said pretended prince of Wales, or with any person or persons employed by him, knowing such persons to be so employed, or should by bills of exchange, or otherwise, remit or pay any sum or sums of money for the use or service of the said pretended prince of Wales, knowing such money to be for such use or service, such person so offending being lawfully convicted, should be taken, deemed, and adjudged to be guilty of high-treason, and shall suffer and forfeit as in cases of high-treason. He the said Robert earl of Oxford and earl Mortimer having, by the means of the said Matthew Prior, held a private and unlawful correspondence with the said consort of the late king James the 2nd, then residing in France, and being determined secretly to promote, as far as in him lay, the interest of the Pretender, but yet contriving to avoid the said penalty of High Treason: And the said consort of his late majesty king James the 2d having empowered abbot Gaultier (a Popish priest and busy emissary between Great Britain and France, during the said private and separate negociations of peace, and who was particularly entrusted as the common agent between the ministers of Great Britain and France, in transacting the most secret affairs relating to the Pretender) to concert with the said Robert earl of Oxford and earl Mortimer the settling the payment and remittance of a very great yearly sum out of her majesty's treasure into France, under colour and pretence of the said letters patents; and the said Robert earl of Oxford and earl Mortimer having held frequent clandestine conferences with the said abbot Gaultier, on the subject aforesaid, and having, by his evil counsels, sacrificed to France the common interests of Europe; and being resolved that the first fruits of the peace with France should be an offering made, by his immediate procurement, to the nearest and most avowed adherent to the Pretender, though at the great expence of the honour and safety of her majesty and her people, did, soon after the conclusion of the peace with France, agree and undertake to procure the payment of the yearly sum of 47,000*l.* and upwards, to or to the use of the said consort, during her life; and in execution of his said purpose did afterwards, on or about the 23d of December, 1713, being then lord high treasurer of Great Britain, and of her majesty's privy council, advise her late majesty to sign a warrant to himself, in the words or to the effect following, viz. "Anne *R.* Whereas our late royal father king James the 2d, by letters patents under his great seal, bearing date on or about the 28th day of August, 1685, did grant unto Lawrence earl of Rochester, Henry earl of Peterborough, Sidney lord Godolphin, Robert Worden, esq. and sir Edward Herbert, kt. (who are all since deceased) divers annuities, or yearly sums, amounting to 37,328*l.* 13*s.* 7*d.*, to hold to them and their heirs, during the life of his then royal consort Mary, now queen dowager, in trust for her; and by other letters patents, bearing date on or about the 3d of December, 1686, did also grant unto the said queen a farther pension or yearly sum of 10,000*l.* to hold during her natural life, all which were made payable in such a manner as in the said several letters patents is more fully exprest. Our will and pleasure now is, and we do hereby direct, authorize and command, that you cause payment to be made to the heirs of such of the said trustees as was the longest liver, of so much as since the 24th day of March last, 1713, is incurred or grown due on the said annuities or yearly sums amounting to 37,328*l.* 13*s.* 7*d.*, and to the said queen dowager or her assigns, of so much as since the said 25th day of March last, is incurred or grown due on the said annuity of 10,000*l.* according to the purport of the several grants or letters patents above recited, as also of what shall hereafter become due and payable upon the said several annuities, quarterly, during the life of the said queen dowager; and for so doing, this shall be your warrant. Given at our court at Windsor-castle, the 23d day of December, 1713, in the 12th year of our reign." And did afterwards, on or about the 24th of December following, sign a warrant to the auditor of the receipt of her majesty's exchequer, requiring him to make and pass debentures for paying to such person or persons as is, are, or shall be authorised to receive the same, the sum of 9,332*l.* 3*s.* 4½*d.*, for one quarter, incurred upon the said several yearly sums therein mentioned, from Lady Day 1713, to Midsummer following, and appointed the same to be satisfied out of the sum of 500,000*l.* appropriated by an act passed the then last session of parliament, for or towards payment of such debts and arrears as were therein mentioned. And another warrant to the said auditor to make and pass debentures for paying to the said queen, or to her treasurer or receiver, the sum of 2,500*l.* for one quarter, incurred on the said pension of 10,000*l.* per annum, from Lady Day, 1713, to Midsummer then last past, and appointed the same to be satisfied out of the sum of 500,000*l.* appropriated by an act passed the then last session of parliament, for or towards payment of such debts and arrears as were therein mentioned. And the said Robert earl of Oxford and earl Mortimer, on or

about the 20th of July, 1714, being then lord high treasurer of Great Britain, and of her majesty's privy council, having corruptly and deceitfully, in further violation of his oath, and his high trust, advised her late majesty to sign a warrant, directing the payment of 1,000*l.* sterling to Daniel Arthur, esq. for monies expended by him for her majesty's special service, and the same being according issued and received by him the said Arthur out of her majesty's treasure, he the said Robert earl of Oxford and earl Mortimer being then lord high treasurer of Great Britain, did give private direction to the said Arthur to pay the said sum of 1,000*l.* to the said abbot Gaultier, or to his use, pursuant to which direction the said Arthur did pay or cause to be paid the said sum of 1,000*l.* to the said abbot Gaultier, or to his use; whereby the said Robert earl of Oxford and earl Mortimer did most wickedly betray the honour of her late majesty, and the imperial crown of these realms, in advising her, under colour of the said letters patents, and without the advice of her council or her parliament, to direct the issuing of the revenue, provided by parliament for the support of the honour and dignity of the crown, to the use and benefit of the open and avowed adherent of the Pretender; and did not only defraud her majesty of the said sum of 1,000*l.* but did most arbitrarily, illegally, and corruptly advise the embezzlement and misapplication of so much of the said sum of 500,000*l.* in contempt and defiance of the express appropriation of an act of parliament.

ARTICLE V.

That whereas by the ancient and undoubted laws of this kingdom, no person, being a natural-born subject of this realm, or within any of the dominions thereunto belonging, and having committed and being under the guilt of High Treason, ought to be received within this kingdom, as a public minister, or with any character from any foreign prince, state, or potentate. And whereas some time in the year 1713, one Patrick Lilesh, stiling himself, and commonly known by the name of sir Patrick Lawless, an Irish Papist (who had served with the late king James the 2d in the war in Ireland, against his late majesty king William the 3d of ever glorious memory, had followed the said king James into France, and continued in the most open and avowed manner in his interests and service, and in rebellion against his said majesty king William, and had bore high commission against, and had been in open arms against her late majesty queen Anne in the late war in Spain) did come into this kingdom, and pretended to have and did take on himself the character of a minister sent from king Philip of Spain, to her late majesty, to treat of matters of the greatest importance to the honour and safety of her majesty and her kingdoms; and having given notice of the same to Robert earl of Oxford and earl Mortimer, then lord high treasurer of Great Britain, and of her majesty's privy council, and who then assumed to himself the supreme direction in her majesty's councils; he the said Robert earl of Oxford and earl Mortimer was not only wanting in his duty to her majesty, in not advising her majesty against receiving and admitting the said Lilesh alias Lawless in the quality aforesaid, but did, together with other false and evil counsellors, advise her majesty to receive and admit him as a minister from his said Catholic majesty; and the said Earl did presume frequently to meet, confer and negociate the most important affairs of the nation with the said Lilesh alias Lawless in the quality aforesaid. And the better to conceal his said illegal and dangerous measures from her said majesty, he the said Robert earl of Oxford and earl Mortimer was privy to, consenting, and advising that the said Lilesh alias Lawless should be introduced to her said majesty and should be received and treated by her minister, under the false and disguised name of Don Carlo Moro. And the House of Lords, some time in the month of April, 1714, having notice of the said dangerous attempt of the said Lilesh alias Lawless, on or about the 9th of the said month, made an humble Address to her majesty, that she would be graciously pleased to issue her royal proclamation, commanding all proper officers and magistrates to make diligent search for, and to apprehend all Popish priests, and to put the laws in execution against them; and likewise to enquire after and apprehend all such persons as have served in arms against her majesty, or their late majesties king William and queen Mary, and who were then within the kingdom, contrary to law, to the end that they might be brought to justice. To which her majesty was graciously pleased to return an Answer to the effect following, viz. That she would give orders pursuant thereto, and a proclamation did accordingly issue. And on the said 9th day of April, the House of Lords (having under their consideration what further security could be provided for strengthening the Protestant Succession in the House of Hanover) came to the following resolution, viz. "That no person, being a natural-born subject of Great-Britain, or within any of the dominions thereunto belonging, and who having traitorously served against her majesty, ought to be received as a public minister, or with any character within this kingdom:" Notwithstanding which, he the said Robert earl of Oxford and earl Mortimer, having no regard to the safety of her majesty's person, or to the security of the Protestant Succession; and setting himself in utter defiance not only of the said advice and resolution of the House of Lords, but of her majesty's assurances to that House of Parliament, and of her royal authority and command, by her proclamation under the great seal: Instead of doing what in him lay to have apprehended and brought, or causing the said Lilesh alias Lawless to be brought to justice, did afterwards on or about the 15th day of March, 1714, most wickedly and traitorously advise her majesty

to sign a warrant, directing the payment of 1,000*l.* sterling to Daniel Arthur, esq. for special services, which being accordingly issued and received by the said Arthur, he the said Earl did privately and corruptly direct the said Arthur to pay the same, and accordingly the said 1,000*l.* was paid to the use of the said Lilesh alias Lawless: and the said Robert earl of Oxford and earl Mortimer did at other times, in a fictitious and scandalous manner, direct the payment of other considerable sums of money, out of her majesty's treasure, to the said Lilesh alias Lawless, which were accordingly paid to him; although it was notorious, that the said Lilesh alias Lawless had not only traitorously served in arms against her majesty, but had been the minister or agent of the Pretender at the court of Madrid; and was under strong suspicions of being sent into England, though under the pretences aforesaid, secretly to promote the interest of the Pretender in these kingdoms. By all which corrupt and evil counsels, he the said Robert earl of Oxford and earl Mortimer did most basely and ungratefully expose the person of her sacred majesty, did what in him lay to enervate and render, ineffectual the advice of parliament, and her majesty's most solemn declarations, in a matter of the nearest concern to her majesty and kingdoms, and by countenancing, in the most corrupt and scandalous manner, the secret emissaries of the Pretender, did greatly encourage his open adherents, to the apparent danger of the Protestant Succession to the imperial crown of these realms.

ARTICLE VI.

That whereas her late majesty queen Anne, after several unsuccessful attempts, in conjunction with her allies, to establish his present imperial majesty on the throne of Spain, being informed, that the people of Catalonia were inclined to cast off the yoke imposed upon them by the French, and to return to the obedience of the House of Austria; and her majesty being desirous to maintain and improve that good disposition in them, and to induce them to put the same speedily in execution, did send Milford Crow, esq. to them, with necessary powers and instructions to carry on so great a work, for the advantage of her service, and the good of the common cause; and to that end to treat with the Catalans, or any other people of Spain, about their coming into the interest of king Charles the 3rd, his present imperial majesty, and joining with her majesty and her allies against the common enemy; and her majesty, after gracious assurances to assist them with men and money, was pleased to authorize her said minister to give them her utmost assurances, to procure the establishment of all such rights and immunities as they had formerly enjoyed under the House of Austria; and that for their further satisfaction, she had sent for powers from king Charles the 3rd, for confirming the same, and was willing to become guarantee that it should be done, nevertheless on this express condition, that they should receive the said king Charles as lawful king of Spain, and utterly renounce the House of Bourbon. And, together with the said instructions, her majesty was pleased to sign and cause to be delivered to her said minister, credential letters to the nobility, magistrates, and all other officers civil and military of Catalonia, desiring them to depend on the promises he should make them in her name. And in her majesty's instructions to the earl of Peterborough and sir Cloudesly Shovel, in or about the month of May, 1705, they are ordered to use their utmost endeavours to induce the Catalans to join with them in their undertaking, and to assure them of her late majesty's support, and to promise them, in the queen's name, that she would secure them a confirmation of their rights and privileges from the king of Spain, that they might be settled on a lasting foundation to them and their posterity. And in case persuasions should not prevail, and the Catalans should not make a suitable return to those kind offers, they were ordered to annoy their towns on the coasts of Spain, and to reduce them by force. And, in conformity to these instructions, a Manifesto, or Declaration was prepared, by the privity and advice of Robert earl of Oxford and earl Mortimer, then one of her majesty's principal secretaries of state, and delivered to the said earl of Peterborough, full, on the one hand, of the assurances aforementioned, and on the other hand, of menaces to them, in case they declined her majesty's overtures, which Manifesto was afterwards published by him the said earl of Peterborough, in Catalonia: and whereas the nobility, clergy, and the whole principality of Catalonia, and the inhabitants of the isle of Majorca, relying on the faith of those royal assurances, did utterly abandon the House of Bourbon, and acknowledged king Charles the 3rd, his present imperial majesty, for their lawful sovereign, and did join their arms with those of her majesty and her allies, against the duke of Anjou; and it having pleased Almighty God so far to bless her majesty's pious and generous undertaking, as by most signal successes, in a short time, to deliver the principality of Catalonia from the heavy yoke of French bondage; and great supplies having been granted by parliament, for the reducing the whole kingdom of Spain to the obedience of the House of Austria; the arms of her majesty and her allies were attended with vast successes, having twice entered the capital city of that kingdom, and obtained many other signal conquests, to the great advantage of the common cause: And through the whole progress thereof, the bravery and firmness of the Catalans being always remarkable, thereby, as well as from the repeated assurances given to them from time to time, in her majesty's name, by every general and minister sent from Great Britain to Spain, the hearts of that brave people were united under the strongest ties of affection and gratitude to her majesty; and they were justly held in the strictest dependance on the continuance of her

royal protection; he the said Robert earl of Oxford and earl Mortimer, being an enemy to the common liberty of Europe, and having traitorously entered into conspiracies for subjecting the whole Spanish monarchy to the House of Bourbon, and designing most maliciously the utter ruin and destruction of the ancient rights, liberties and privileges of the Catalans, who had made so glorious a stand for the preservation of them, did, together with other false and evil counsellors, form a most dishonourable, wicked, and cruel contrivance, not only for abandoning the Catalans to the fury and revenge of the duke of Anjou and his adherents, but for the final extirpation of all their rights, liberties, and privileges. And in execution of that his intention, during the private, separate, and pernicious negociation of peace, which was carried on between him and the ministers of France, and before any negociation of peace was set on foot, in due form of law, between the crowns of Great Britain and Spain, did advise her majesty to give directions to the lord Lexington, her ambassador to the court of Spain, to acknowledge the duke of Anjou king of Spain, but was greatly wanting in his duty to her majesty, in not advising her to give instructions to her said minister, at the same time, peremptorily and absolutely to insist on the securing the Catalans' liberties at the conclusion of the peace. And although the private, separate, and treacherous practices of him the said Robert earl of Oxford and earl Mortimer, and others, in combination with the ministers of France, did afterwards, on or about the 14th of March, 1713, necessitate his present imperial majesty to conclude a treaty for the evacuating Catalonia, (whereof her majesty was guarantee) without any express and positive stipulation for the Catalans' liberties, (his imperial majesty relying, in that respect, on her majesty's declaration, to interpose for them in the most effectual manner, and on the promises of the French king to join his endeavours for the same purpose.) And although her sacred majesty did, both before and after, frequently declare by her ministers in Spain, that she thought herself under the strongest ties of honour and conscience, not to abandon a people whom the necessities of the war had obliged her to draw into her interest. And though the French king did not join his endeavours for the purposes aforesaid; he the said Robert earl of Oxford and earl Mortimer, together with other false and wicked counsellors, having from time to time amused and deceived the distressed Catalans, with groundless hopes of her majesty's effectual interpositions in their favour, thereby engaging them in a more obstinate defence of their territories against the duke of Anjou, was not only highly wanting in his duty to her majesty, by not doing what in him lay, as a faithful minister, to have prevented the conclusion of the Treaty of Peace with Spain, till just and honourable conditions were secured for the Catalans, but did falsly, maliciously, and treacherously advise her majesty to conclude a peace with the king of Spain, without any security for the ancient and just rights, liberties and privileges of that brave, but unhappy nation. And did further advise her majesty to send sir James Wishart, her admiral, with a large squadron of men of war, at a great expence to favour the said king of Spain in the siege of Barcelona, the capital city of Catalonia, and with express instructions, that in case the inhabitants of Majorca should refuse the terms that should be offered them by the duke of Anjou, to employ his squadron in countenancing and assisting all attempts that should be made for reducing them to a due obedience. By which most vile and detestable counsels, her sacred majesty, contrary to her most pious intentions, the faith of nations, and the duties of religion, and humanity itself, and contrary to her solemn and repeated assurances, was prevailed on to abandon a distressed people, drawn in, and engaged by her own invitation, into an open war with the duke of Anjou, for the preservation of the liberties of Europe, and the commerce of Great Britain. And the persons, estates, dignities, rights, liberties and privileges of the Catalans were given up as a sacrifice to the implacable resentment of their enraged and powerful enemy; the honour of the British nation, always renowned for the love of liberty, and for giving protection to the asserters of it, was most basely prostituted; and a free and geneous people, the faithful and useful allies of this kingdom, were betrayed, in the most unparalleled manner, into irrevocable slavery: And, in consequence of which most dishonourable and perfidious counsels, the most execrable hostilities, burnings and plunderings were committed upon them, throughout their whole province, without sparing the effusion of innocent blood, and without the distinction of age or sex: and that unfortunate people were afterwards forced to undergo the utmost miseries of a siege in their capital city of Barcelona; during which great multitudes of them perished by famine and the sword, many of them have since been executed: And great numbers of the nobility of Catalonia, who for their constancy and bravery, in defence of their liberties, and for their services in conjunction with her majesty and her allies, had, in all honour, justice and conscience, the highest claim to her majesty's protection, are now dispersed in dungeons, throughout the Spanish dominions; and not only the Catalan liberties extirpated, but by those wicked counsels of him the said Robert earl of Oxford and earl Mortimer, Catalonia itself is almost become desolate.

All which crimes and misdemeanors were committed and done by him the said Earl against our late sovereign lady the queen, her crown and dignity, the peace and interest of this kingdom, and in breach of the several trusts reposed in him the said Earl.

And he the said Robert earl of Oxford and earl Mortimer was either commissioner of the

treasury, or lord high treasurer of Great Britain, and one of her majesty's privy council, during the time that all and every the crimes before set forth were done and committed.

For which matters and things, the knights, citizens and burgesses of the House of Commons in parliament assembled do in the name of themselves, and of all the Commons of Great Britain, further impeach the said Robert earl of Oxford and earl Mortimer of other High Crimes and Misdemeanors in the said Articles contained. And the said Commons by protestation, saving to themselves the liberty of exhibiting at any time hereafter any other accusations or impeachments against the said Earl, and also of replying to the Answers which the said Robert earl of Oxford and earl Mortimer shall make to the premises, or any of them, or to any impeachment or accusation that shall be by them exhibited, according to the course and proceedings of parliament, do pray, that the said Robert earl of Oxford and earl Mortimer be put to answer all and every the premises; and that such proceedings, examinations, trials and judgments may be upon them, and every of them had and used, as shall be agreeable to law and justice.

L. H. Steward. Read the Answer to the Impeachment.

The *Clerk* reads the Answer:

THE ANSWER OF ROBERT EARL OF OXFORD AND EARL MORTIMER, TO THE ARTICLES EXHIBITED BY THE KNIGHTS, CITIZENS AND BURGESSES IN PARLIAMENT ASSEMBLED, IN THE NAME OF THEMSELVES, AND OF ALL THE COMMONS OF GREAT BRITAIN, IN MAINTENANCE OF THEIR IMPEACHMENT AGAINST HIM FOR HIGH TREASON, AND OTHER HIGH CRIMES AND MISDEMEANORS, SUPPOSED TO HAVE BEEN BY HIM COMMITTED.

The said Earl, saving to himself all advantages of exception to the said Articles, and of not being prejudiced by any words, or want of form in this his Answer; and also saving to himself all rights and privileges belonging to him as one of the Peers of this realm, for Answer to the said Articles saith: He admits many solemn treaties and alliances have been formerly entered into, between the crown of England and other princes and potentates of Europe, for their mutual security, and to prevent the immoderate growth of the power of France, which might prove dangerous to the neighbouring princes and states; and that therefore it was laid down as a fundamental principle and maxim of union amongst the allies, that France and Spain should never come and be united under the same government, and that one and the same person should not be king of both those kingdoms; and he apprehends, that the principal view and aim of the allies was to settle and maintain an equal balance of power in Europe; and, since the conjunction of Spain to the dominions of France might possibly ensue from the duke of Anjou's being possessed of that crown, the dispossessing him was desired, as the most likely means to prevent that conjunction; and for the same reason the union of Spain with the empire must have been equally fatal, and the prevention of it equally the design of the alliance; nor could the continuance of Spain in the House of Bourbon be in any respect prejudicial to the allies, if the union of that crown with France could be prevented. As new dangers of such union have been apprehended, new treaties and stipulations have been entered into among the allies to obviate such dangers, and particularly the Treaty for an intended partition seems to have been concluded upon that view; and though he acknowledges the wisdom of parliament in condemning that Treaty, as prejudicial and fatal in its consequences to England, and the peace of Europe, yet, he presumes, it was not condemned, because part of the dominions of the crown of Spain were thereby allotted to the House of Bourbon; but because such considerable parts of those dominions, as the kingdoms of Naples and Sicily, the province of Guipuscoa and other territories, were allotted to that branch of the House of Bourbon, to whom the crown of France was to descend, which might have been a great and dangerous addition to the then formidable strength of that crown; and because it was made against the repeated remonstrances of Charles the 2nd, then king of Spain, who declared by his ambassador, That such Partition Treaty could have no other effect, than to force Spain to throw itself into the arms of France, to prevent the dismembering of the Spanish monarchy. And, that it had this consequence, appeared upon the death of that prince, who seems to have been induced by that consideration to bequeath the entire monarchy of Spain to the duke of Anjou, a younger branch of the House of Bourbon; who accordingly, upon the demise of the said king Charles the 2nd, took possession of the monarchy of Spain. But this accession of the duke of Anjou to the crown of Spain did not produce the alliance, in the Article mentioned, between Leopold, then emperor of Germany, his late majesty king William the 3rd, of ever-glorious memory, and the States General, as immediately necessary at that juncture: for king William, as well as the States General, acknowledged the duke of Anjou as king of Spain; thereby allowing, that the duke of Anjou's enjoyment of the monarchy of Spain, while he was but a younger branch of the House of Bourbon, was not destructive of the liberties of Europe, or the preservation of a due balance of power. And afterwards, when the French king had seized the Spanish Netherlands, king William, by advice of parliament,

came into the assistance of the States, as an auxiliary only, by sending, upon their request, 10,000 men, which England was obliged by treaties to furnish, in case the States were attacked; after which, many conferences passed at the Hague betwixt the ministers of England and the States, and those of France, in order to find out some expedient, by which, upon a reasonable division of the dominions of Spain, a new war might be prevented; and the States, in the course of those conferences, often asserted, that though they had acknowledged Philip king of Spain, yet such an acknowledgment was not contrary to the demand of a reasonable satisfaction to be given to the Emperor for his pretensions to the Spanish succession; which was in effect to declare, that the satisfaction demanded for the Emperor was such, as would leave king Philip in possession of Spain. But those conferences broke off about August, 1701, without effect; and in September following, king William entered into the Grand Alliance with the Emperor and the States General; whereby it was agreed, That in the first place, endeavours should be used by amicable means to obtain the satisfaction desired for the Emperor; who, probably, at that time, would have accepted a very easy composition for his pretensions: but when the French king acknowledged the Pretender as king of England (which not long after happened,) his majesty king William, and the parliament of England, justly provoked by this affront, resolved to enter into the war which had been begun by the Emperor alone, in Italy, the year before; and the late queen mentions this indignity, as the chief motive of her engaging in it, as appears by her declaration of war against France and Spain in May, 1702. The said Earl admits the several Treaties set forth in the preamble to the said Articles, and that such advice was given by parliament, and such speeches were made from the throne, as in the said preamble are mentioned; but, for more certainty, begs leave to refer himself to the very Treaties, Addresses of Parliament and Speeches, when they shall be produced: and he humbly hopes your lordships will allow him to observe, that those Treaties manifestly shew, that the design of the allies, in endeavouring the recovery of Spain from the House of Bourbon, was to prevent the union of those two potent kingdoms in one and the same person. In the Grand Alliance in 1701, the avowed ends are, the procuring an equitable and reasonable satisfaction to his imperial majesty for his pretensions to the Spanish succession, the security of the dominions of the king of Great Britain, and States General, with the navigation and commerce of their subjects, and the preventing the union of France and Spain under the same government. And the territories and provinces, pointed out in the Fifth Article, were the farthest views of that alliance; whereby it was thought, his imperial majesty would receive the utmost satisfaction which he could reasonably demand, for his pretension to the Spanish succession. No mention is made of the recovery of the whole monarchy of Spain to the House of Austria, either in the Grand Alliance, or in the defensive one made the same year between his majesty king William and the States General: and when, in the Treaty between the Emperor, the queen of Great Britain and the States General, on the one part, and the king of Portugal on the other, about May, 1703, it was concerted to place archduke Charles, the present Emperor, upon the throne of Spain, he was then but a younger branch of the House of Austria; and there is great reason to believe that the queen, as well as other princes of Europe, and in particular the king of Portugal, did not think a Treaty to procure the crown of Spain for the archduke, when a younger branch of the House of Austria, did lay an obligation of procuring that monarchy for him, when he became first of that House, and was elected Emperor; since the imperial and hereditary dominions, joined to the whole Spanish monarchy, would have given such an excess of power to one prince, as would have been formidable to Europe, and a means to destroy that balance of power which her majesty in all her Treaties had constantly laboured to preserve: and it is a known and an allowed rule by the law of nations, in reference to leagues between princes, that if there happens a material change in what was the principal ground and cause of the Treaty, the obligation thereof ceases. If, therefore, in the preliminary Articles in 1709, and afterwards in the conferences at Gertruydenberg, a cession of the Spanish monarchy to king Charles the 3rd, who was then younger brother to the Emperor, was thought reasonable to be insisted on; yet the said Earl humbly submits to your lordships' great judgment, whether there was equal reason for insisting on such cession, when king Charles the 3rd was become head of that House, and had possession of the empire and all the hereditary countries of Austria, as a condition, without which no peace should be made. The States General were so far from admitting or yielding, that the monarchy of Spain should in all events be given to the House of Austria, that he, the said Earl, hath heard, they refused to admit it to be inserted as a condition of their Barrier Treaty, when proposed by her majesty's ambassador at the Hague, and chose rather to put a stop to the proceedings of that Treaty, and hazard the advantages they thereby expected, than comply with that proposal. The advice of parliament is of great weight, to which her late majesty always gave, and he the said Earl always paid, a just regard; and he doubts not but the House of Peers had proper inducements when they gave their advice to the throne, "That no peace could be safe, honourable, or lasting, so long as the kingdom of Spain and the West-Indies continued in the possession of any branch of the House of Bourbon." But, if he may be permitted to offer his humble conjecture concerning the motives of that advice, he conceiveth it might proceed from an apprehen-

sion of a future union of those two crowns as likely to ensue, in case Spain should continue in the possession of any who might become heir to the crown of France, and that even the conjunction of the empire and Spain would be less dangerous than such a union. But when her majesty communicated to her parliament, the 6th of June, 1712, the terms upon which a peace might be made, and thereby informed them, "That France had been brought to offer, that the duke of Anjou should, for himself and his descendants, renounce for ever all claim to the crown of France; and at the same time the succession of the crown of France was to be declared, after the death of the then Dauphin and his sons, to be in the duke of Berry and his sons, in the duke of Orleans and his sons, and so on to the rest of the House of Bourbon; and that the succession to Spain and the West-Indies, after the duke of Anjou and his children, was to descend to such a prince as should be agreed upon at a Treaty of Peace, for ever excluding the rest of the House of Bourbon;" both Houses of Parliament, by their respective addresses to her majesty, in the same month, expressed their entire satisfaction: and as the House of Commons desired her majesty "to proceed in the negociations then depending for obtaining a speedy peace;" so the House of Lords assured her majesty, "That they entirely relied on her majesty's wisdom to finish that great and good work." And after her majesty had concluded a peace on those terms, both Houses of Parliament severally congratulated her majesty on the conclusion of the peace; and also joined in an Address of the 22nd of April, 1714, expressing their "just sense of her majesty's goodness to her people in delivering them, by a safe, honourable, and advantageous peace with France and Spain, from the heavy burthen of a consuming land-war, unequally carried on, and become at last impracticable. He the said Earl acknowledges, that her majesty was pleased about August, 1710, to readmit him, among others, to a place in her council, and to require his service in offices of trust; to which he submitted purely in obedience to her majesty's commands, with great reluctance, from the prospect of the difficulties with which he was likely to struggle. But as he never asked any employment, nor used any wicked arts, or base insinuations, to obtain the same from her majesty; so in all employments, with which her majesty was pleased to honour him, he sincerely endeavoured to discharge his duty with the utmost integrity, having always, with the truest zeal, desired and endeavoured, as far as he could, to promote the honour and service of her majesty, whose aim he knew to be the welfare of her kingdoms, in the first place, and, as far as she judged it consistent with that, the common good of her allies. In or about the month of September, 1710, her majesty (whose undoubted prerogative it was) thought fit to dissolve the parliament then in being, and to call a new one. In the year 1711, propositions were made by France to her majesty for a peace, without the contrivance or previous knowledge of the said Earl: her majesty, out of her affection for her people, having it much at her heart to establish peace in her own days, expressed her concern for the disappointment of former negociations, and her earnest desire to put a speedy end to the war, and to the effusion of Christian blood, and to ease her subjects from the heavy burthen of their taxes. The said Earl doth acknowledge, that he thought a peace was very much for the interest and advantage of Great Britain: and, in his humble opinion, the most favourable juncture for obtaining advantageous terms of peace, was immediately after the signal victories gained by her majesty's arms, in the year 1706. For, after the reduction of the dominions of the electors of Bavaria and Cologne, with other important conquests in Germany; after the entire destruction of three great armies of France, in Flanders, Spain, and Piedmont; after the allies had recovered the Spanish Netherlands, Milan, and other territories in Italy; it might have been hoped, from the great distress in which the enemy then was, a just and reasonable peace would have been obtained; since so much was at that time gained from the enemy, and so much more in all probability would have been yielded by them, as would have fully answered the ends of the Grand Alliance. Peace was at that time sought by the enemy; and the said Earl, who had the honour to be one of the principal secretaries of state, owns he then advised the accepting of it. And he humbly begs leave to observe, that the war had been continued upon so unequal a foot, that the burthen of it annually encreased, and, at the time when these proposals were made by France, was become almost insupportable. It had indeed been stipulated by the Grand Alliance, that the allies should assist one another with all their forces, according to a specification to be agreed on in a particular convention for that purpose: but it doth not appear any such convention was made, otherwise than as the House of Commons were informed by one of the principal secretaries of state to his late majesty king William, that by the proportions adjusted with the States, England was to furnish two parts of five by land, and the States the other three; and England was to furnish five parts of eight by sea, and the States the other three: but the States not always allowing themselves to be under an obligation to furnish such proportions, gave occasion to England's bearing an unequal part in the war, with respect to the allies. The States had that prudent regard to the frugal ordering of their affairs, that they frequently insisted they ought not to be pressed beyond their ability, and made themselves the sole judges of what came within the compass of it, and by that means avoided the supplying any quota, or proportion, which they thought improper for them to furnish. In the mess

time the charge of the war was greatly increased upon the subjects of Great Britain: in the year 1702, it was under four millions; from thence it gradually increased till the year 1706, the charge of which year amounted to above five millions and an half; and still advancing, till the year 1711, it was then grown to near seven millions; and, at the same time, there was a debt contracted, not provided for by parliament, amounting to 7 or 8 millions; the very interest of which, and other debts, wherein the nation was involved, amounted to three millions per annum; and the revenues of Great Britain were under such anticipations, that it was found difficult to raise above two millions and an half for the growing service, to be paid within the compass of the year. So that, when the duties and difficulties upon trade, and the continuance of the taxes upon land, which had lain so heavy above 20 years, are considered, the said Earl believes it could not be thought for the public interest to prolong the war, without an absolute necessity. During this time the States had managed with so good œconomy, that the said Earl hath not heard of any additional duty laid by them upon trade, from the year 1702, to the year 1711. And what acquisitions were made upon the continent, during the continuance of the war, though at the expence of British blood and treasure, accrued to the share of the allies; and the Dutch, being under no prohibition of commerce with France, had a further advantage of the British merchants, in respect to a free trade. Although the princes of the empire were engaged by previous treaties to furnish their quotas to the common cause, yet when they were often pressed to do it, they alleged in excuse, "That those troops which they were obliged to furnish at their own expence, were in the pay of the crown of Great Britain." The emperor left it to her majesty to provide for those troops, which by the Portugal Treaty, in the year 1708, he was to furnish. The king of Portugal not only neglected the proportion of 12,000 foot and 3,000 horse, which by the said Treaty he was to provide at his own expence, but even refused to permit the 11,000 foot and 2,000 horse, for which he had a subsidy from her majesty, to be paid by musters, according to an Article of that Treaty; and, when pressed to furnish his full number of troops, alleged his inability, for want of that part of the subsidies which the States ought to have paid him: so that almost the whole charge of the war in Spain was left upon her majesty; the States having sent few or no troops thither, after the battle of Almanza; and all the other allies being likewise defective in their proportions. This was the condition of affairs, with respect to the charge of the war; nor did there appear, from the then situation of affairs, any more promising prospect, with regard to the event: for, although it had pleased God to bless her majesty's arms with wonderful success, at which the said Earl most sincerely rejoiced; yet it did not appear, that after the year 1706, our successes in other parts had countervailed our losses in Spain; for after two great battles, wherein we had been there defeated, after our forces had been twice obliged to retire from Madrid, and after the taking the British troops at Brihuega, the recovery of Spain (which was the main article that retarded the conclusion of the peace at Gertruydenberg) seemed almost desperate, especially since the French in the year 1711, by their plentiful vintages and harvests, had well nigh recovered the effects of the famine; and since some of the allies at the same time made pressing instances for recalling part of their troops, as they had done frequently during the course of the war; from whence it appears how just the grounds were, upon which both Houses of Parliament represented to her majesty, that the war had been unequally carried on, and was at last become impracticable. And the said Earl humbly hopes, he shall not be thought to have designed any disservice to his country, if, in such a condition of affairs, he did not dissuade her majesty from hearkening to the overtures of peace made to her from France; or if, during the negociations, he endeavoured, by corresponding, with her majesty's knowledge and approbation, in any courts concerned therein, to rectify any mistakes, or contribute in any measure towards the conclusion of a general peace. But the said Earl believes, that, in all the negociations towards such peace, the allies had such knowledge and communication of all measures therein taken by her majesty, as the treaties her majesty was engaged in required: that the propositions transmitted from France about April, 1711, were immediately communicated to the pensionary and ministers of Holland: that her majesty did at the same time assure them of her resolution to act in concert with them, in making peace as in making war. That when the States had expressed their desires to be equal with those of Great Britain for a general and lasting peace, and had declared, that they were ready to join in proper measures to procure it, and desired France might explain itself more particularly upon the points contained in those propositions; her majesty endeavoured to obtain such explanations, and afterwards communicated them to the States: and if her majesty thought it not expedient to proceed in the method of a preliminary Treaty, which had proved so ineffectual in the year 1709 and 1710, but thought it might be sufficient, upon Articles signed by a minister of France, by his sovereign's command, to open conferences for a peace; the said Earl humbly hopes, that this proceeding will appear to be so far from being an unreasonable deviation from the methods of former transactions in that kind, that it will be justified by many precedents of such treaties. The said Earl can affirm, that, during the whole negociation, so far as he was concerned, he acted with a sincere intention to obtain a general peace for the welfare and honour of her majesty and her

kingdoms, and such as might give reasonable satisfaction to her allies, and answer all the obligations her majesty was under, by any treaties with any of the confederates; and is not conscious to himself that he hath, in any respect transgressed that duty, which as a privy counsellor, or officer of state, he did owe to her majesty, or to the public. He is not insensible that many of the Articles, wherewith he stands charged, are complicated with such circumstances, aggravations and inferences, as may render it difficult for him to acknowledge some facts alleged, without acknowledging, or seeming at least to acknowledge, those circumstances or inferences. And, as he is not conscious to himself of being guilty of any crime he stands charged with, so he takes it to be agreeable to the common course of proceedings of this nature, and to your lordships' justice, that he should not admit any circumstances which may tend to the accusation of himself. He therefore begs leave that he may be allowed to distinguish between the acts themselves, and the inferences drawn from them; and that wherever he acknowledges any facts, he may not be understood to acknowledge those consequences which are in the Articles deduced from it, unless it shall appear that that consequence was the aim and design of the said Earl, or is the necessary result of any act he hath done.

In answer to the First Article,* the said Earl saith, that he always had the greatest regard to the honour and safety of her late majesty and her kingdoms, to all the engagements she was under to the allies of this nation, and to the common liberties of Europe; that he never was devoted to the interest or service of the French king; that he is not conscious to himself of having acted, whilst he had the honour to be her late majesty's high treasurer, or one of her most honourable privy council, contrary to his oath or in violation of his duty and trust, or with disregard to, much less defiance of any treaties in the said Article mentioned, the advices of parliament, her majesty's declarations from the throne, or any mutual assurances which had been made or renewed between her majesty and the States to act in perfect concert with each other in making peace as in making war: And he utterly denies, that in or about the months of July or August 1711, or at any other time, he did form any contrivance or confederacy to set on foot a private, separate, dishonourable or destructive negociation of peace between Great Britain and France; nor doth he know of any such contrivance or confederacy formed by any of her majesty's privy council, or that such negociation was at any time set on foot. But the said Earl saith, he doth believe, that about the month of April, 1711, her late majesty did receive from France some proposals, in order to set on foot a Treaty for a general peace, signed by Monsieur de Torcy, secretary of state to the most Christian king, which, as he believes, were immediately communicated by her ambassador in Holland to the States-General: Whereupon, as he has been informed, they thanked her majesty for her confidence in them, declared themselves to be weary of the war, and ready to join in any measures her majesty should

* Among the Oxford papers, in the possession of the duke of Portland, is a sheet, containing an abstract of the first Charge, and of this Answer to it; followed by the Article which his grace has very obligingly permitted me to insert here.

Case on the First Article.

By several Treaties with the Allies it is provided, viz.

1701, September: Grand Alliance (videP reamble)—That it shall not be permitted to either party to treat of peace unless joyntly and by communication of councells.

1701, November: Defensive Alliance.—That no negociation of peace shall be set on foot by one of [the] Allies without the concurrence of the others—That each ally shall continually impart to the other every thing that passes in the said negociation.

1703, May: Portugal Treaty.—That no peace nor truce shall be made but by the mutual consent of all the confederates—That it shall not be allowed to make particular treaties but the peace shall be joyntly treated of.

1703, June: Treaty with the States.—That neither of the allies should make a suspension or peace, but in conjunction and by common consent.

1. Put the Commons to prove,—That the Earl sett on foot any negociation of a peace.

If proved—Shew that the first propositions were made by France, and that the same were communicated to the Allies.

2. It was no offence not to advise against a negociation sett on foot with consent of the Allies.

3. Put the Commons to prove, That the Earl advised sending Mr. Prior with such propositions.

If his instructions be produced to prove this, insist those were only memorandums for Mr. Prior to insist on by way of explanation of the proposals from thence.

Prove—That it has been usual in like cases to settle particulars for the private interest of one ally without communicating them to the other.

Prove—The matters transacted by Mr. Prior no secret.

Prove—Duke of Marlborough privy to the negociation of peace.

Prove—The Allies did many things of like nature without previous consent or communication.

If obj.—That it appears the secret was not to be divulged without mutual consent of both parties, which shows it to be a secret negociation.

Answer—That this is a usual clause or instruction in transactions of this kind.

think proper for obtaining a good peace, and that they hoped her majesty would bring the French to explain more particularly the several points contained in the above-mentioned proposals, or to that effect; and that after such request her majesty sent Matthew Prior, esq. to the court of France, in order to obtain as full and ample an explanation as he could of the first general offers: But the said Earl denies that he did advise her majesty to send the said Mr. Prior to the court of France, to make propositions of peace, without communicating the same to her allies; or that the said Mr. Prior did, by his advice or privity, communicate any propositions to the ministers of France, wherein the interests of Great Britain, or the common interest of Europe were betrayed; nor doth the said Earl know, that the said Mr. Prior had any power to communicate propositions to the ministers of France, which betrayed either the interests of Great Britain, or the common interest of Europe. Therefore the said Earl insists, that there is no ground to charge him with the treacherous or pernicious contrivances in this Article mentioned. And if any article was inserted in any propositions to be communicated by the said Mr. Prior, that the secret should be inviolably kept till allowed to be divulged by the mutual consent of both parties; yet the said Earl denies that such article was inserted by his advice; and if any such there was, he cannot however believe it was designed to exclude her majesty's allies from their just share in the said negociations, and hopes he may be allowed to observe, that in case any instructions were given for not divulging propositions which concerned Great Britain in particular, the same were far from manifesting such design as is before-mentioned, since it is well known to be the undoubted right of every member of a confederacy to demand particular advantages for themselves, not inconsistent with their alliances, and which are not to take place but on the conclusion of a general peace: And it has been usual for those to whom the first overtures of peace are made, to make demands for themselves in the first place; as the States particularly did in the negociations at the Hague in the year 1709, and at Gertruydenberg in the year 1710. And though he apprehends that an agreement not to divulge the propositions without the mutual consent of both parties, could not be to the prejudice of the allies; yet he believes, that in order to prevent any unreasonable jealousies among them, even those propositions which related to Great Britain in particular, were communicated to them; and that it will likewise appear, that the propositions signed by Monsieur de Torcy, and transmitted in the month of April, 1711, in the said Articles mentioned, whereby it is said, the French king offered to treat with the plenipotentiaries of England or Holland alone, or jointly with those of the allies, at the choice of England, were proposals relating only to the manner of treating, when the conferences should be opened; and that her majesty was so far from taking upon her to treat singly for the allies, that she chose to have all the parties admitted to the congress, where they might have an opportunity of treating and adjusting their respective interests; that being, in her opinion, the fairest method of proceeding, most advantageous to the confederates, and most likely to prevent jealousies and discords among them. And the said Earl saith, that he doth not know that any negociation of peace was contrived or set on foot by any persons employed in her majesty's service, which was in any respect more advantageous to France than France had asked, or which had a tendency to give the enemy a power to create misunderstandings between her majesty and her allies, or to destroy the confidence between them.

In answer to the Second Article, the said Earl saith, that he believes monsieur Mesnager, a subject of the French king, did some time in the year 1711, with her majesty's leave, come into the kingdom of Great Britain, and bring with him a letter from the said French king to her late majesty, acknowledging her majesty queen of Great Britain, and likewise expressing a desire to re-establish peace with her, and that he was furnished with full powers from the said French king for that purpose. The said Earl further saith, that it hath been the usual and allowed practice in most nations, especially in England, for privy counsellors by verbal orders from the sovereign to confer within the realm with ministers of foreign princes, and he conceives such practice to be agreeable to the laws of this realm: And that full powers are usually granted to ministers who are sent abroad, for the justification of persons with whom they shall treat, rather than to justify such ministers themselves. And the said Earl denies, that he did in the month of September, 1711, or at any other time, secretly and unlawfully, or without authority, confer or treat with the said sieur Mesnager on the negociations of peace between Great Britain and France, or that he did advise or promote the making a private and separate treaty or agreement between the said crowns: But he hath been informed, and doth believe, that there was a paper, stiled, The Answer of France to the preliminary demands of Great Britain more particularly, signed by monsieur Mesnager only, to which was subjoined a Declaration of the queen's acceptance of those Preliminary Articles, as conditions his most Christian majesty consented to grant, which were to be reduced into the usual form of treaties, and explained after the most clear and most intelligible manner, to the common satisfaction of Great Britain and France, and this only in case of a general peace: And this Declaration, or some other Declaration to the like effect, he believes might be signed by the lord Dartmouth and Mr. Secretary St. John, as in the said Article is set forth. But the said Earl must crave leave to submit it to the judgment of your lordships, whether a paper of that sort (if any such

there was) containing offers from France, which were not to take effect but in case of a general peace, can be called a separate treaty. He believes the allies had early knowledge and participation of the said proposals from the ministers of Great Britain; but denies that the interests of Great Britain were thereby given up to France, or the duke of Anjou admitted to be king of Spain; since in the Declaration annexed to the said proposals, he believes it is expressed, that her majesty might in justice expect the securities and advantages mentioned in those proposals, what prince soever he should be to whom the monarchy of Spain should be allotted; and the said Earl, recollecting as well as he can what were her majesty's views at that time, is persuaded that her majesty had then a prospect, that the monarchy of Spain would fall to the share of another prince. The said Earl denies, that by his privity, consent, or advice, any private or separate treaty or agreement, whereby the interests of Great Britain were given up to France, or the duke of Anjou was admitted to be king of Spain, was agreed, concluded, and signed by the sieur Mesnager on the part of France, and by the lord Dartmouth and Henry St. John, or either of them, in behalf of her late majesty; much less did the said Earl, at any time, assume to himself regal power, or take upon him to meet and treat with the enemy without authority from her majesty, or do any thing to subvert the ancient and established constitution of the government of these kingdoms, or introduce any illegal or dangerous methods of transacting the affairs of state. And the said Earl further saith, that he did never aim at, or endeavour, by any separate treaty, to dissolve or cancel any of those solemn treaties, in which her majesty stood engaged to her allies, nor was he privy to any treaty, whereby the queen was brought under a dilemma, either to submit to the dictates of France in the progress of this negociation, or to lose the confidence of her allies.

In answer to the Third Article, the said Earl denies, that to disguise, or carry on any private, separate, or dangerous negociations, he did contrive or advise the preparing and forming the set of general preliminaries in the Article mentioned, intitled, Preliminary Articles on the part of France, to come to a general peace; or any other set of general preliminaries of like nature; or that the same should be signed by the sieur Mesnager; or that he did advise her sacred majesty, that the same should be received by her majesty: But the said Earl hath been informed, that certain Articles, called Preliminary Articles on the part of France, to come to a general peace, signed by the Sieur Mesnager only, were received by her majesty, and believes the same might be communicated to the ministers of the allies then residing in England, as a ground whereon the confederates might treat or negociate concerning a general peace; but whether the same were communicated as the only transactions that had been on that subject, between Great Britain and France, the said Earl knows not: But since it is termed impious advice, and contrary to the duty and trust of a minister of state of Great Britain, to advise the receiving such articles; the said Earl, from his concern for the honour of her late majesty's administration, and the future welfare of these kingdoms, doth submit, whether it is criminal for such minister to advise the receiving articles from a minister of a prince in war, containing proposals for giving reasonable satisfaction to Great Britain and all her allies, and which being signed by the minister of that prince only, were not intended to bind any other. And since Preliminary Articles are no essential step towards a general negociation, (there being, as he believes, but few instances where any matters of importance have been settled before the opening of general conferences,) the said Earl doth not conceive, that if any minister of state had advised her majesty to accept the preliminaries or offers from France, said to be signed by monsieur Mesnager the 27th day of September, 1711, as the foundation of a treaty, he had thereby offended against any known law, since the proceedings upon such preliminaries could not be more unsafe than proceeding without any at all. The said Earl denies, that any treaty, signed by the earl of Dartmouth or Mr. St. John, or either of them, on the part of England, and the sieur Mesnager on the part of France (if any such there be) was industriously concealed from the allies, her majesty's council, or parliament, by his advice or contrivance; or that he dissuaded her majesty from laying any such treaty before her allies, her council or parliament; or that he advised her majesty to receive the said general preliminaries, or to communicate the same in her name, or by her authority, to the States General, as a sufficient foundation whereon to open the conferences of peace with France. The said Earl hath been informed, and doth believe, that there were certain instructions prepared and signed by her majesty, and delivered to the earl of Strafford, her majesty's ambassador to the States General, wherein the said ambassador might be directed to represent to the pensionary of Holland, and such others as should be appointed to confer with him, in such manner as is set forth in this Article, or to the like effect; but he denies, that the said instructions were prepared, signed, or delivered by his advice. Nevertheless the said Earl believes, the said instructions were well warranted by the truth of such facts, as in the said Article are set forth to be contained in those instructions, since the said Earl hath had credible information, that after her majesty had received an account of the sense of some persons in Holland, concerning the overtures made by France, for the setting a general negociation of peace on foot, very pressing instances were made on her majesty's behalf, with the enemy, to explain the first offers

made by monsieur de Torcy more particularly, and to form a distinct project of such a peace as they were willing to conclude; and that such instances had effect, will appear from the preliminaries said to be signed by monsieur Mesnager, September the 27th, 1711, wherein several explications are made, and many particulars of moment are contained, which were not in the propositions of monsieur de Torcy: Wherefore the said Earl apprehends, that the propositions said in this Article to be sent over to France, (if any such were sent) were not so general as the propositions of monsieur de Torcy, nor in any respect ensnaring, or destructive to the interests of Great Britain or the allies: But yet the said Earl believes that her majesty, at the same time she did communicate the said preliminaries to the States General, did likewise order her ambassador to acquaint them, that she judged those Articles did not contain such particular concessions as France would probably be obliged to make in the course of the negociations, or to that effect. If therefore her majesty did, for the good and ease of her people, endeavour to prevail with her allies to enter into a negociation of peace, and did communicate the said preliminaries to them, with that view, the said Earl cannot be induced to believe, that the said general preliminaries, communicated to the States by her majesty in manner aforesaid, were calculated to amuse and deceive them; nor doth the said Earl know or believe, that her majesty's instructions to her said ambassador, either in the particulars abovesaid, or in any other, contained matters false, prevaricating or evasive.

And the said Earl must take the liberty to affirm, that in the late negociations of peace, as well as in all other public transactions of state, as far as he was concerned, he acted with the highest regard to the honour of her majesty, and with the utmost zeal for the welfare both of her and her people, and is not conscious to himself that he ever gave any counsels, whereby the truth and sacredness which ought to constitute and accompany the instructions of public ambassadors to princes in friendship and confederacy, against the common enemy, were in any wise prostituted, or the honour of her majesty and of the imperial crown of these realms in any sort debased or betrayed: And he humbly hopes no instance can be given, wherein the royal hand of her late majesty was made the instrument to advance the interest of the common enemy.

In answer to the Fourth Article, the said Earl doth not remember what representations were made by monsieur Buys to her majesty in relation to the propositions in the said Article mentioned, but saith, That if any representations were made, the same were not rendered ineffectual by any influence of the said Earl: And the said Earl doth admit, that at a committee of council there might be made some declaration in her majesty's name to Monsieur Buys to the effect in the said Article mentioned; but doth not admit that any such declaration was made by him the said Earl, or by his management or contrivance. And the said Earl believes, that what was so declared to the said monsieur Buys, was agreeable to truth, and to the real sentiments and intentions of her majesty; nor doth he know wherein the said Articles, signed by monsieur Mesnager, and accepted by the lord Dartmouth and Mr. St. John, if any such were then signed, were inconsistent with such declaration, or how her majesty was thereby dishonoured, or her allies abused, or that any negociation entered into with France was either dangerous in itself, or fatal in its consequences.

In answer to the Fifth Article, the said Earl admits, that her sacred majesty queen Anne did in due form of law, and under her great seal, constitute the right reverend John lord bishop of Bristol, and the earl of Strafford her plenipotentiaries, with full powers to meet, treat and conclude with the plenipotentiaries of the confederates, and those whom the French king should on his part depute for that purpose, the conditions of a good and general peace, that should be safe, honourable, and, as far as was possible, agreeable to the reasonable demands of all parties, and believes instructions were prepared and delivered to them, wherein they were instructed, among other things, to the effect in the said Article set forth; and is firmly persuaded, that when the said plenipotentiaries were so instructed to insist, that Spain and the West Indies should not be alloted to the House of Bourbon, no treaty had been negociated and agreed, that Spain and the West Indies should remain in a branch of that House: And he has reason to believe, that at the time when the said instructions were given to her majesty's said plenipotentiaries, there was just ground to believe, that king Philip would be induced to abandon Spain and the West Indies, and content himself with the dominions of Savoy and the kingdom of Sicily: And he believes he may so far depend on his memory, as to say, that he heard the late queen declare, she believed the prospect king Philip had of succeeding to the crown of France, would be an inducement to him to be easy with that allotment. And it seemed probable, that the addition of the dominions of Savoy to the crown of France, in case king Philip should succeed to it, would be esteemed by the French court as a thing more to be desired by them, than that Spain and the Indies should remain in the possession of a younger prince of the House of Bourbon, under the condition of his renouncing the right he would have to the crown of France, if the eldest branch should fail. These seem to him to have been her majesty's views at the time when the said instructions were given to the bishop of Bristol and the earl of Strafford; and he therefore believes, that whoever contrived or prepared the same, did prepare them conformable to her majesty's real sentiments, and was

far from any thought or design to abuse the royal authority, delude the States General, prejudice his imperial majesty, or any of the allies, or to carry on the measures of France: and if king Philip afterwards, upon information that the then Dauphin was likely to live, or at the pressing instances of the Spaniards, and influence of Spanish counsels, or upon any other motives, refused to accept of Savoy and Sicily, and chose rather to renounce the French monarchy; he thinks no person who acts in the service of the crown can be safe, if it may be charged on him as a crime, that he advised instructions, which by intervening circumstances afterwards became improper. But he the said Earl doth not admit, that he contrived or prepared the said instructions, or was consenting or advising to the contriving or preparing of them, or prevailed on her majesty to sign them; much less that he abused the royal authority, to the delusion of the States-General, or intended the prejudice of his imperial majesty or any of the allies, or was engaged to carry on the measures of France, or had, when the said instructions were prepared, negociated or agreed with the ministers of France, that Spain and the West Indies should remain in a branch of the House of Bourbon, or had prevailed on her majesty to be party to any private treaty, wherein the same is necessarily implied. If the plenipotentiaries were instructed, in case the enemy should object, that the Second Article of the seven, signed by monsieur Mesnager, implied the duke of Anjou should continue on the throne of Spain, to insist that those Articles were binding to France, but laid neither the queen nor her allies under any obligation, the said Earl doth not apprehend how an instruction to her majesty's plenipotentiaries, to make a just Answer to a false inference, that might happen to be drawn by the enemy from the words of such an Article, can be interpreted an entering into a confederacy or collusion with the ministers of the enemy; or that her majesty's consent to such instructions could imply any design to impose on his imperial majesty or the allies, or to conceal any negociations between Great Britain and France. But the said Earl is confident it will not appear by any of his actions, on the strictest scrutiny, that he ever entered into any confederacy or collusion with the ministers of the enemy, or prevailed on the queen, to give her consent thereto, or had any designs to impose upon his imperial majesty, or any of the allies, or ever was privy to any secret negociations or separate Treaty between Great Britain and France, whereby either in the before-mentioned, or in any other particulars, any reproach could be brought on the crown of these realms, or any treaties wherein her majesty was engaged to her allies were violated.

In answer to the Sixth Article, the said Earl doth admit, that after the conferences of peace between the plenipotentiaries of the allies, and those of the enemy, for negociating a general peace, were opened, wherein he is persuaded her majesty and her ministers did act in perfect confidence with the allies, in order to promote their common interest, and to obtain from the enemy all just and reasonable satisfaction; the progress of the said negociation was delayed by debates, concerning the enemy's refusal to give their answer in writing to the demands of the allies; but he doth not know that any of the ministers of Great Britain did, by any encouragement or concurrence, contribute thereunto: and if, during that time, her majesty thought fit to authorize any of her ministers to write or negociate upon any particular points relating to the peace, directly from England to France, in order to facilitate the general negociations of peace, which he the said Earl doth not admit to have been done by his privity; yet he the said Earl doth not apprehend, that by the constitution of the kingdom, or any law in being, the queen was debarred from doing so; or that by constituting the said plenipotentiaries, she had so far delegated to them her royal authority, as to be disabled, without revoking their commission, to treat or negociate any matters conducing to that end, in such other manner as she should think fit. The said Earl saith, that he did not advise, contrive, or promote any private, separate, or unjustifiable negociation with France, nor doth he know any negociation relating to the peace was carried on without communication thereof to the allies. And the said Earl denies that he ever assumed regal authority, or that he treated of peace with France in any manner that could be liable to such imputation, or did promote the design of the enemy to the destruction of the common cause of her majesty, or of her allies, contrary to the laws or constitution of this kingdom, or in violation of any of the alliances her majesty stood engaged in, or of the assurances given by her majesty, or of her instructions to her plenipotentiaries; or that any terms of peace were by him at any time concerted prejudicial to the interest of her majesty, or her kingdoms, or allies, or whereby the good effects of the general negociation were defeated.

In answer to the Seventh Article, the said Earl saith, that he never advised her late majesty to accept of a treaty with France, on a supposition that the Spanish monarchy should continue in the possession of a branch of the House of Bourbon; nor did he advise or carry on any private or separate negociation with France, on the subject of a renunciation to be made by the duke of Anjou, of the right he might have to the kingdom of France, and that such renunciation should be the security against the re-union of the two kingdoms: or that by his counsels her majesty was prevailed on to accept, and finally to conclude and ratify a Treaty of Peace with France, wherein the said renunciation is taken as a sufficient expedient to prevent the mischiefs that threatened all Europe, in case the crowns of France and Spain should be united upon the head of one and the same

person: nor doth he know, that during the said negociation, any such memorial, as in the said Article is set forth, was transmitted by the said monsieur de Torcy to any of her majesty's principal secretaries of state: but he the said Earl doth freely acknowledge, that if he had been called upon to give his opinion concerning the leaving of Spain and the West Indies in the possession of a branch of the House of Bourbon, and accepting the renunciation of his right to the kingdom of France by the duke of Anjou, he doth not at present see any reason why he might not have been of opinion for leaving Spain and the West Indies to the present possessor, and accepting the renunciation, rather than have continued the war, so burthensome to the people, and so impracticable upon the foot on which it then stood, especially since all endeavours to remove him by treaties or force had so long proved ineffectual. And in case any such memorial as is set forth in the said Article, was sent by any minister of France to the secretary of the late queen, he should look upon the same as a proof of the earnestness of the court of France to avoid such renunciation, which might more effectually prevent all possibility of annexing the crown of Spain to that of France. But whatever inducements might be for such a memorial (if any such was transmitted) the said Earl doth affirm, that he never gave any counsels by which the interest of the common cause could be betrayed into the hands of the enemy; nor doth he think it was possible by any power and influence, to engage her majesty to become party with France in any deceit; but whatever credit he at any time had by her favour, he always used it with the utmost sincerity for her service, and the good of her people.

In answer to the Eighth Article, the said Earl believes, That her late majesty queen Anne did, on the 7th day of December, in the year of our Lord 1711, recommend it from the throne, that provision might be made for an early campaign, in order to carry on the war with vigour, and as the best way to render the Treaty of Peace effectual; and he doth believe, that in order thereto supplies were granted, and magazines provided at a great expence for an early campaign, and that in pursuance thereof her majesty might send some general officers to explain her intentions to her allies; and likewise instructed her general the duke of Ormond to declare her resolutions of carrying on the war, and to concert with the generals of the allies the proper measures for entering upon action; and he doth believe, that the confederate army was provided with all necessaries: but whether the said army had approached, or how near they had approached to the enemy; whether they had any, or what superiority, as to the number of troops; or what likelihood there was, that they would have been able, either by battle or siege, to have bettered the affairs of the allies, or to have facilitated the negociations of peace, the said Earl is not able to say: but it must be obvious to every one, that any miscarriage or disaster on the part of the allies, at such a juncture, must have been fatal to them: and though the Divine Assistance had been very remarkable in the many victories her majesty's forces had obtained, yet her majesty's piety was so great, that it is not likely she should, without the greatest necessity, have been willing to have tempted that Providence which had been so signal in her favour, by hazarding the blood of her subjects at a time when she had so near a prospect of the conclusion of a peace: and the said Earl believes it might be owing to this piety of the queen, and her knowledge of some important matters then depending, that directions were sent to the duke of Ormond (if any such were sent) to avoid engaging in any siege, or hazarding any battle till further orders; which he supposeth her majesty might do upon any causes she thought proper, as well as the deputies of the States, who, as the said Earl hath been informed, have often refused to engage in siege or battle, upon such ground as they alone thought fit, when their own generals, and the generals of the other allies, were of opinion they had a visible advantage of the enemy, and might engage in such siege or battle with great probability of success. But he doth affirm that the ministers of France never represented to him or to any others, as far as he knows, during any negociation, any apprehensions they had from the bravery and good disposition of the confederate army; nor was he ever informed of any sure prospect which it is alleged the army of the confederates then had of gaining new conquests over the army of France, or whereby they would have been enabled to have forced any better terms of peace than there was at that time likelihood of: but on the contrary he has been informed, that the forces of France were superior in number to those of the confederates, especially in horse. However the said Earl doth not admit, that he did advise or consent that any order should be dispatched in her majesty's name to the duke of Ormond to the aforementioned effect; nor had he any view or design to disappoint the expectations of the allies, or to give success to any secret negociations with the ministers of France. The said Earl likewise denies, that he did consent or advise that orders should be sent to the bishop of Bristol, one of her majesty's plenipotentiaries then at Utrecht, to declare to the Dutch ministers, that her majesty looked on herself, from their conduct, to be then under no obligation whatsoever to them. He doth not know what alarm the allies might take, or what representations they made to the bishop of Bristol of their dissatisfaction or consternation, but doubts not the said bishop would readily represent what they desired, though such representation (if any such there was,) fell not under the knowledge of the said Earl, nor doth he admit that any application of that kind was made to him. And in case the States General made such address di-

rectly to her majesty, by a letter of the 5th day of June, as in the said Article is set forth, he the said Earl not being acquainted therewith, could neither advise her majesty to hearken to the instances therein made, nor to disregard or reject the same. He saith, he never entered into measures for the advancement of the interest of the common enemy, or countenanced, encouraged, advised or promoted any negociations with France, without participation of the allies, or contrary to her majesty's engagement, or to the ruin of the common cause; nor is he conscious to himself, that he ever gave any counsels, by which the progress of the victorious arms of the confederates was stopped, or any opportunity lost for conquering the enemy, or which had any tendency to destroy the confidence between her majesty and her allies, or make the French king master of the negociations of peace, or which could put the affairs of Europe into his hands.

In answer to the Ninth Article, the said Earl denies he was privy or consenting to any concert with the ministers of France for the separating the troops in her majesty's pay from the rest of the confederate army; and not being privy to any such concert, he hopes it will not be imputed to him as any want of duty, that he did not advise against such a proceeding. He denies also, that he ever entertained the least design of imposing upon the allies any necessity of submitting to the terms of France, or of leaving the confederate army to the mercy of the enemy, or that he did consent or advise her majesty that the duke of Ormond and the troops in her majesty's pay, or such of them as would obey his orders, should separate themselves from the army of the confederates. The said Earl hath been informed, and believes it to be true, that the imperial general, and some other generals, did propose to the duke of Ormond in June or July, in the year 1712, to decamp from the ground where they lay, and to proceed towards Landrecy, in order to form the siege of that place, and that the duke of Ormond thought it not proper to consent thereto, and gave notice to the said generals, that if they decamped they must not expect him to follow them. And the said Earl believes, instances may be given where generals of other potentates in the alliance have refused to comply with what has been proposed to them by her late majesty's general. The said Earl hath likewise heard, that, notwithstanding such notice from the duke of Ormond, the said generals separated themselves and their forces from the said duke, and marched towards Landrecy without him, and that the said duke continued for some time in his former camp after such separation: and that the generals of the auxiliary troops paid by her majesty, although required by the said duke of Ormond, under whose command they then were, to continue with him, and to obey his orders, refused so to do. He the said Earl supposes it might proceed from her majesty's resentment of that instance of disobedience in the auxiliary troops to the commands of her general, that she did not think fit immediately to pay the arrears of those forces which had so obstinately withdrawn themselves from her general, and marched without him towards Landrecy, as not apprehending herself obliged by any conventions, or the provision of any act of parliament, so to do. But whatever might be the causes or occasions of her majesty's resentment, the said Earl saith, that he being in the office of high treasurer under her majesty, could not, by the duty of his place, issue out any monies without a proper warrant or authority from her majesty; and denies that he ever received any warrant or authority from her majesty for issuing any sum or sums of money for, or towards the pay or subsidies on account of the said foreign troops who had so separated, without which the issuing or directing any monies for the payment of them had been a violation of his duty. And the said Earl denies, that he did at any time refuse or put a stop to any such pay or subsidies; but on the contrary, when the ministers of the princes to whom those forces belonged, did apply for the payment of the said troops, the said Earl desired them to make application to her majesty for the necessary warrants in order thereunto. And as the said Earl had no notice of any separation intended between her majesty's forces and those of the allies before the same was made; so he absolutely denies, that by his advice or counsel, or with his privacy, any such separation was made: and humbly apprehends that he ought not in justice to be charged with any consequences of it. He believes, that the forces of some of the allies were engaged in the unfortunate action of Denain, and that the siege of Landrecy was raised, and the towns of Quesnoy, Bouchain and Doway, were some time after retaken by the French army: but whether those disasters might not have been prevented by a compliance with the measures her majesty had taken for the common good, the said Earl submits to your lordships.

In answer to the Tenth Article, the said Earl denies that he did carry on, or concert with the ministers of France, a private or separate negociation for a general suspension by sea and land between Great Britain and France; or that he did advise her majesty to send over Henry viscount Bolingbroke to the court of France; with powers to settle such suspension; but hath been informed, and believes it may be true, that about the 19th of August, 1712, N. S. a suspension of arms was agreed on in France by the said viscount Bolingbroke on her majesty's part for four months; but whether such agreement was made without the knowledge or participation of her majesty's allies, or how far the terms of peace were then settled with France, either for Great Britain, or the allies, the said Earl is not able to set forth: But from the information he hath received of that affair, believes it will appear,

that the said suspension was a continuation only of a former agreement for a cessation of arms, which had been not only communicated to the allies, but into which they had been invited; and believes her majesty might be induced to desire such cessation, as was usual amongst princes and states in war during negociations of peace, by which means the British merchants enjoyed a free trade, and had an opportunity of carrying the merchandizes of other countries to several parts of Europe, as the Dutch had done during the war; and therefore the said Earl doth not conceive that her majesty, by the said suspension, did in the least intend the violation of any treaties between her and her allies or to deprive them of any assistance to which they were entitled, or expose them to the insults of the common enemy: nor doth he discern how these consequences could ensue, without the default of the allies themselves; much less how the ties of union and friendship between her majesty and them were cut asunder, or her majesty's person or government, or the safety of her kingdoms, or the Protestant Succession, were exposed thereby. But the said Earl assures himself, that he shall never stand chargeable with any consequences of such suspension, which he never advised; nor did he the said Earl ever entertain the least thought or design of occasioning the destruction of the common cause of Europe, or hindering her majesty from resuming the war against France, in conjunction with her allies, if it had been so thought fit, or of weakening the union between her majesty and them.

In answer to the Eleventh Article, the said Earl saith, he believes it to be true, that in or about the months of September or October, 1712, the States-General were in possession of the town and fortress of Tournay; and that her majesty, in her instructions of December the 23rd, 1711, to her plenipotentiaries at Utrecht, did direct them to insist with the plenipotentiaries of France, in the general congress, that towards forming a Barrier for the States-General, Tournay shall remain to the States; and doth believe the French king did at one time incline thereto: But doth not know that her majesty in her Speech, in the said Article mentioned, did declare herself as in the said Article is set forth. The said Earl admits, that until and after the months of September and October 1711, there was open war between her late majesty and the French king; and that during such war, the French king and his subjects were enemies to the late queen: But the said Earl hath been informed, and believes, that full powers were given by her majesty, and the States-General of the United Provinces, to their respective ministers, and by the French king to his ministers, to negociate and treat of peace between her majesty and the States-General, and said French king; upon which negociations a peace was afterwards concluded between them; during which negociations he hath heard, that the French king did insist upon the yielding up the town and fort of Tournay by the States to him; and the said States-General desired her majesty's interposition with the French king on their behalf; and that at such request her majesty interposed her best offices on behalf of the States-General, and did at last prevail, that the said town and fortress of Tournay should be, and he believes the same is continued to the States-General, as part of their barrier. But the said Earl absolutely denies that he did design to give aid or succour, or to adhere to the French king; or that he did in or about the month of October, 1712, or at any other time, during the said war, aid, help or assist, or adhere to the said French king; or, that he did ever counsel or advise the said enemy in what manner, or by what methods the said town and fortress of Tournay, or either of them, might be gained from the States-General to the French king, in manner and form as in the said Article is charged. On the contrary, he the said Earl did use his best offices to preserve the said town and fortress of Tournay to the States-General. But the said Earl saith, that during the negociations of the late peace, he had the honour to be one of her majesty's privy council; and whatsoever counsel or advice he gave, relating to any terms of the said peace, he acted therein as a privy-counsellor and minister of state, and no otherwise: And doth insist, that for any privy-counsellor and minister of state, during the negociations of peace, to advise or negociate, concerning the yielding or giving up any town, province or dominion, upon conclusion of the peace, as part of the terms and conditions of such peace, is not high-treason by any law of this realm; and that such construction might hereafter deprive the crown of the advice and assistance of several members of the privy-council, in matters of the greatest importance, by deterring them from giving such advice as by their oaths, and the duty of their place, they are obliged to do: would overthrow all means of restoring amity between princes, and render the law, in case of high-treason, uncertain, which by reason of its being the most penal, ought to be most plain; and would be highly dangerous and destructive to the lives and liberties of the subject.

In answer to the Twelfth Article, the said Earl (not admitting that her late majesty queen Anne stood engaged by treaties in manner as in the said Article is alleged, but referring himself to the treaties, when they shall be produced) for answer, denies, that he did in any of the years 1710, 1711, 1712, or at any other time, aid, help, assist, or adhere to the duke of Anjou, in the said Article named, or advise or counsel any of the enemies of her said late majesty, or concert with any of them, or promote the yielding or giving up of Spain and the West-Indies, or any part thereof, to the said duke of Anjou, in manner and form as in the said Article is alleged. And the said Earl saith, as in his answer to the Eleventh

Article he hath already said, that during the negociations of the late peace, he had the honour to be one of her said late majesty's privy-council, and whatever counsel or advice he gave, relating to any terms of the said peace, he acted therein as a privy-counsellor and minister of state, and no otherwise; and insists as in his answer to the Eleventh Article he has insisted.

In answer to the Thirteenth Article, the said Earl admits, that the flourishing condition of trade and navigation contributes much to the riches, power and strength of these kingdoms; and believes, that her late majesty had a just regard thereto, and a sincere desire to obtain some advantages therein for her people; and did make the several declarations from the throne set forth in this Article: and that both Houses of Parliament did, from time to time, express their grateful acknowledgments to her majesty, for her great care and concern for the welfare of her people; and believes her majesty might think it reasonable, considering the share and burthen she and her people had sustained in the war, that France should, in the first place adjust the interests of Great Britain, which were to be secured on the conclusion of a general peace: but the said Earl doth not know or believe that at the setting on foot, or in the progress of any negociation between the ministers of Great Britain and France, it was laid down as a principle that France should in the first place consent to adjust the interests of Great Britain, to the intent that the ministers of Great Britain might thereby be enabled to engage the queen to make the conclusion of the peace easy to France; nor doth he know that any concessions were made by the ministers of Great Britain, with intent to promote the interests of France against the allies; or that any measures were entered into or concerted between them, in order to strengthen the hands of the French, or to enable them to impose the terms of a general peace. And the said Earl doth absolutely deny that he was engaged, in concert with France, in any negociation destructive to his country, or that he ever had the least imagination or thought tending that way, or to the sacrificing the commerce of Great Britain to the aggrandisement of France: but on the contrary, he hath always had the most real and sincere desires to secure and advance the commerce of Great Britain, and to preserve his country, in whose service he hath been always ready to sacrifice himself, and every private interest whatsoever. And the said Earl is not conscious to himself of any want of duty, either in not insisting upon, or not procuring the most certain securities that could be obtained for the safety and advantage of the commerce of these kingdoms. And the said Earl doth not admit, that he did advise her late majesty, that any proposition should be sent by Mr. Prior to France; or that any private or separate Treaty, or the preliminary Articles, which are said to be signed the 27th day of September, 1711, should be signed. But the said Earl hath been informed and believes, that in a paper entitled, "The Answer of France to the demands of Great Britain" more particularly, it is said, that the entire restitution of Newfoundland, and of the bay and streights of Hudson, was demanded for the English: and that the French king's Answer was, "That the discussion of that Article should be referred to the general conferences of the peace, provided the liberty of fishing and drying of codfish upon the isle of Newfoundland should be reserved to the French." And the said Earl conceives that paper was not conclusive, but was to be the subject of future conferences, wherein the whole matter might be entirely considered; and consequently that the entering into conferences on that paper, was not the yielding to the French the liberty of fishing and drying fish on Newfoundland, which they insisted on. And the said Earl denies, that he advised the demands for Great Britain, in point of commerce, should be made in loose, general, or insufficient terms; or that he advised the liberties insisted on by the French should be given up to France, as in the said Article is alleged: and he believes that when it is considered what advantages were likely to ensue to the commerce of Great Britain by the Assiento contract, and the liberty of trading to the Spanish West-Indies, by the cession of Acadia, the bay and streights of Hudson, the island of St. Christopher, Newfoundland, the island of St. Peter, with other adjacent islands; by the demolition of Dunkirk, and the cession of Port-Mahon and Gibraltar, it will not be thought the commerce of Great Britain was neglected by her majesty, in the late treaties of peace. And as the said Earl doth not know that France was at any time master of the negociations, so he denies that he did engage her majesty in any private treaties with France, without security for the commerce of Great Britain; or that he did contrive, with any of the ministers of France, to keep in suspense any matter that concerned the said commerce, or that he was any ways instrumental to the preventing any advantages of the said commerce from being settled, or that he endeavoured to elude any thing that had been agreed on in any negociations for the benefit of Great Britain. And although the said Earl doth not admit, that he advised the Ninth Article of the Treaty of Commerce with France, yet he begs leave to observe, that nothing is positively stipulated in that Article, but the whole is conditional, and left to be determined by the wisdom of parliament; and hopes it will never be thought an act of treachery, to refer any Article of any Treaty to the judgment and consideration of parliament, whatever judgment the parliament shall think fit to make thereon. And the said Earl denies, that he advised her majesty to agree with France, that the subjects of France should have liberty of fishing, and drying fish on Newfoundland: but the said Earl believes,

that what her late majesty agreed with France, relating thereto, will not seem unreasonable, if it be considered, that the French long ago claimed a right to, and were in possession of great part of Newfoundland; and that they were allowed to continue in possession thereof by the crown of England, in a Treaty made at Whitehall, in the year 1686; and in another Treaty made at Ryswick, in the year 1697. And the said Earl doth not know that such agreement of her majesty is contrary to the express provision of any act of parliament, since he presumes the Act made in the 10th and 11th years of the reign of king William the 3rd, entitled, "An Act to encourage the trade to Newfoundland," cannot reasonably be intended, or construed to extend, to any part of the island, other than what was at the time of making that act in the possession of the English. And the said Earl is informed, that at that time the part of Newfoundland, where the subjects of France are, by the Treaty of Utrecht, allowed the liberty of fishing, and drying fish, was not in the possession of the English. The said Earl denies, that he advised her majesty to make a cession to France of the isle of Cape Breton; or that he advised her majesty to consent, that what is agreed in the Treaty of Utrecht, concerning the fishery of Newfoundland, or Cape Breton, should be made an Article of that Treaty: however, the said Earl doth not know that Cape Breton was part of the territories of the crown of Great Britain; nor doth he apprehend, that her majesty, who in her Speech from the throne declared, that France had consented to make an absolute cession of Annapolis, with the rest of Nova Scotia, or Acadia, should be understood to speak of Cape Breton, which is no part of that continent, but an island distinct from it. The said Earl further saith, he conceives, that the only advantages in trade, stipulated for Great Britain, did not depend on conditions to be made good by act of parliament: on the contrary, he doubts not to make it appear, that many advantages in trade were stipulated for Great Britain, in the late Treaties of Peace and Commerce, which have been enjoyed by the subjects of Great Britain, since the conclusion of the said treaties, notwithstanding the parliament hath not thought fit to make any act to enforce the Ninth Article of the Treaty of Commerce with France. And the said Earl denies, that by his counsels, the good intentions of her sacred majesty, to have obtained for her people advantageous terms of commerce, were frustrated, or the trade or manufactures of Great Britain rendered precarious, or at the mercy of the enemy; or any beneficial branch of trade yielded up to the subjects of France. And as the said Earl disowns the being concerned in any violation of treaties, or in carrying on the measures of France, or in any negociation which could terminate in the sacrifice of the commerce of Great Britain to France; so he observes, with great satisfaction, the flourishing condition of the trade and navigation of these kingdoms, since the conclusion, and by means of the late peace, in the great encrease of the number and tonnage of shipping, of the exportation of the woollen manufactures, the fish, and other produce of this kingdom; in consequence whereof, the customs have been greatly advanced, near three millions of gold and silver hath been coined, and the exchange has been all along in the favour of England, to and from all parts of Europe.

In answer to the Fourteenth Article, the said Earl doth not admit that he formed any project, or design, for disposing the kingdom of Sicily to the duke of Savoy, from the House of Austria; or that he did advise her majesty to give any such instructions to Henry viscount Bolingbroke, as in the said Article mentioned, or to consent to any Treaty wherein a cession is made of the said kingdom to his royal highness without any concurrence or participation of his imperial majesty; nor doth he admit that her majesty was prevailed on, by his advice, to assist his said royal highness with her fleet, against the Emperor, in order to obtain the possession of that kingdom. But in justification of her majesty's proceedings, in relation to the said kingdom, the said Earl doth beg leave to observe, that by the Grand Alliance it was agreed, among other things, that the confederates should use their utmost endeavours to recover the kingdom of Sicily out of the hands of the enemy; and that the principal ends for endeavouring the recovery of Sicily were, that his imperial majesty might have a reasonable satisfaction for his pretension to the Spanish monarchy; and that the trade and navigation of the subjects of Great Britain and Holland might thereby be better secured. Since therefore the empire, and hereditary countries of Austria, were now fallen to Charles the 3rd, who at the time of that Treaty was a younger branch of that House: since several towns in the French Flanders, which were not in the possession of king Charles the 2nd, at the time of his death, together with Spanish Flanders, Milan and Naples, might seem a reasonable satisfaction for his imperial majesty's pretensions to the Spanish Succession: and since the trade and navigation of the subjects of Great Britain and Holland would be as effectually secured, by the disposition of the kingdom of Sicily to the duke of Savoy, as if the said kingdom had fallen to the share of the Emperor: and greater difficulties would be likely to arise, in obtaining the disposition thereof to the House of Austria, than to that Duke, in as much as king Philip might be more easily induced to yield it to the duke of Savoy, than to so potent a prince as the Emperor; and there were grounds to believe that all, or most of the princes and states of Italy, were so apprehensive of the growing power of the House of Austria in Italy, that they would suffer any extremities, rather than submit that Sicily, together with Milan and Naples, should

be in the hands of the Emperor, the said Earl doth not discern how any project to dispose the said kingdom to that duke could be thought unjust, dishonourable, or pernicious, or an act of injustice to his imperial majesty, or violation of the Grand Alliance: nor doth the said Earl remember, in what respect it was contradictory to any declaration of her majesty, or the instructions she had given her plenipotentiaries: and in case her majesty thought fit, afterwards, to employ any part of her fleet to assist that duke, her good and faithful ally, to take possession of that kingdom from the enemy, in consideration of the said duke's steady adherence to the confederacy, and great sufferings by such adherence; he the said Earl is not able to discover why such assistance might not be given to the said duke, as well as to any other of her allies whatsoever. And since it is allowed by this Article, that the then duke of Savoy never made any application, in order to obtain the said kingdom for himself, it seems an evidence at least, that the person or persons who advised the late queen to agree to such allotment, did not act upon any private interest, or had any other view than the preservation of a balance of power in Europe, and the security of the trade and navigation of the subjects of Great Britain and Holland; and cannot reasonably be thought, upon a fair and candid interpretation, to have been guilty of betraying the national faith, or honour of the crown, or employing the naval power of these kingdoms, or the supplies granted by parliament, against an ally of this kingdom.

In answer to the Fifteenth Article, the said Earl saith, he is and always was of opinion, that the word of the sovereign is sacred, and that all communications from the throne to parliament ought to be true, and that it becomes all ministers of state, as far as in them lies, to maintain the honour of the crown, in such cases, with the utmost exactness; nor doth the said Earl know that he hath, at any time, been defective in his duty, in this particular, or ever took upon himself any arbitrary or unwarrantable authority, much less the chief direction and influence in her majesty's councils: nor did he ever prostitute the honour of the crown or dignity of parliament, by misrepresenting any part of the late negociations of peace, to deceive either her majesty, her allies, her parliament, or her people; nor did ever prepare, form, or concert, or advise her majesty to make any speech or declaration from the throne to her parliament, that was not conformable to truth. He believes her majesty might make several speeches from the throne to her parliament, at the several times in the said Article mentioned, to which the said Earl refers; and particularly, that her majesty did on the 7th of December, 1711, declare, that her allies, especially the States General, had, by their ready compliance for opening a Treaty of a general Peace, expressed their confidence in her; but the said Earl not admitting there were such representations as suggested in this Article, begs leave, in vindication of the honour of his royal mistress, who was a princess of strict piety and truth, to observe, that the States-General sent over monsieur Buys to her majesty, with letters full of assurances of their respect for her person, and their resolutions not to separate themselves from her; and likewise signified by him to her ministers, their readiness to concur with her majesty. And the said monsieur Buys, immediately upon his arrival at London, delivered passports for the French ministers to come to Utrecht; and at a meeting of several lords of the council, shewed his approbation of sending circular letters to invite the rest of the allies to the general Congress; and the said monsieur Buys exhibited full powers for preparing and signing a new Treaty, whereby her majesty and the States should be mutually engaged to each other in making war and peace, to guarantee the peace when made, and to invite the rest of the allies into such guarantee; all which matters and transactions being previous to the 7th of December, 1711, her majesty might justly regard the aforesaid authentic acts and assurances, as greater proofs of the confidence the States had in her, and of their readiness to concur with her, than any representations or reports before that time; and that the said Declaration of her majesty from the throne was founded upon the strictest truth. And the said Earl believes, that every one who impartially considers the steps taken in the late negociations of peace, the length of the Treaty, the several letters from one of her majesty's principal secretaries of state to her plenipotentiary at Utrecht, the ratification of the engagement signed by her ministers and monsieur Buys, the 18th of December, 1711, and her exhorting the States to ratify the same; her pressing instances to the princes and states of the empire, and the many other acts which were done by her majesty's orders during that transaction, for the service and satisfaction of her allies, will readily acknowledge, that her majesty did her utmost to procure for her allies, and in particular for his imperial majesty, all reasonable satisfaction; and to unite with them in the strictest engagements to render the peace secure and lasting, agreeable to her Speech of the said 7th day of December, and her Message of the 17th of January following, in this Article mentioned: and if by any extraordinary demand or groundless jealousies of any of the allies, or other accidents, her majesty was not able to obtain for them all the advantages she desired, this will not derogate from the truth and sincerity of her majesty's expressions. And it is evident her majesty did procure them so great satisfaction, that the allies did all sign the peace at the same time with her majesty, excepting only the Emperor; and even his interests were so far adjusted, that what remained in dispute was not thought sufficient to delay so great and good a work: and it is well known the emperors of Germany have frequently de-

clined signing their treaties of peace at the same time with their allies. But that her majesty was induced by any influence of the said Earl to enter into any negociation with France, exclusive of her allies; or that the said Earl carried on any such negociation; or that the interest of the said allies, or in particular of the Emperor, were, by any practices of his, given up to France, he utterly denies. And when it is considered, that much British blood and treasure had been spent to recover Spain and the West-Indies from the House of Bourbon, that an expensive war had for many years continued, which her majesty still supplied with new recruits and redoubled expence; that her armies, and those of the allies, had been beaten in Spain: that prince Eugene had declared, that 40,000 men and four millions of crowns per annum would be necessary for carrying on that war, and that his master could supply no more than a fourth part of that charge; that it was found by long experience, how averse the people of Spain in general were to submit themselves to the House of Austria; that her majesty discerned the charge of renewing the war in Spain would be a burthen too great for her subjects, and that there was little probability of its being successful: that the hereditary countries were then, by the death of the emperor Joseph, fallen to king Charles, who was soon after chosen emperor (by which event the interest of the princes and states of Europe were changed;) it cannot be doubted but that her late majesty had, at the time when she made the aforesaid declaration, done her utmost to recover Spain and the West-Indies by force of arms: and the most she could do afterwards was by way of negociation, wherein she insisted with that earnestness on king Philip's quitting Spain, that France complied with her majesty's proposals: but when king Philip could not be prevailed on to give up Spain, her majesty thought his renunciation of the crown of France, as circumstances then stood, the most practicable, if not the only method left to prevent the union of those two monarchies. But the said Earl doth not think it probable, that the leaving Spain and the West-Indies to the House of Bourbon, was the foundation of the Preliminary Articles signed by monsieur Mesnager, and of the declaration annexed, which had been signed by the lord Dartmouth and Mr. St. John, with her majesty's consent (and which the said Earl supposes is what is called the private Treaty in this Article), since he believes it was then thought more likely that the crown of Spain might fall to some other prince. And the said Earl doth not observe, how her majesty can be charged with uttering any falsity in her Message of the 17th day of January, wherein she takes notice how groundless the reports were that had been spread of a separate peace being treated, for which report there was not then, nor at any other time, the least foundation; since only some few points were adjusted, relating to the particular interests of her own kingdoms, and even those were to have no effect but upon the conclusion of a general peace, and were likewise, before such conclusion, communicated to the allies. And the said Earl denies, that thenceforth, or at any time, there were carried on, by him, any separate measures with the ministers of France; nor doth he conceive, that the proposal about the renunciation was merely speculative, but that it was of such a nature as would execute itself, and keep the crowns of France and Spain more effectually divided than ever; if it be considered, that it did not consist only in a renunciation to be made by Philip, then in possession of the crown of Spain, of his contingent right to that of France; but that there was a title to the crown of France thereby given to the duke of Orleans, and after him to the rest of the princes of the House of Bourbon, who could not be presumed to want the will, nor would be likely to want the power, to take possession of the crown of France, by virtue of such title, in opposition to a prince at such a distance, and who had solemnly renounced all his pretensions to it. Nor can the said Earl think the declaration of any minister of France, against such expedient (if any such were made) a sufficient ground for her majesty to decline it. The said Earl therefore must beg leave to repeat, that he is not able to discover, from any thing that appears in those speeches, that in the particulars afore-mentioned, or any other, the essential points relating to peace and commerce, or which concerned the interests, as well of the allies as of Great Britain, were misrepresented by her majesty; nor doth he know or believe, that any instance can be given wherein he abused the favour of his royal mistress, to whom he did always bear and pay the most sincere veneration and duty; or wherein he did mislead her parliament into any groundless or fatal resolution, or prevented their advice to her majesty, or obtained their approbation to any dangerous practices, or whereby her majesty could be ever deprived of the confidence of her allies, or exposed to contempt.

In answer to the Sixteenth Article, the said Earl doth insist, that by the laws and constitution of this realm, it is the undoubted right and prerogative of the sovereign, who is the fountain of honour, to create peers of this realm, as well in time of parliament, as when there is no parliament sitting or in being; and that the exercise of this branch of the prerogative is declared, in the form or preamble of all patents of honour, to proceed *ex mero motu*, as an act of mere grace and favour; and that such acts are not done, as many other acts of a public nature are, by and with the advice of the privy-council; or, as acts of pardon usually run, upon a favourable representation of several circumstances, or upon reports from the attorney-general, or other officers, that such acts are lawful or expedient, or for the safety or advantage of the crown; but flows entirely from the beneficent and gracious disposition of the sovereign. He farther says, that neither the warrants for patents of honour,

the bills or other ingrossments of such patents, are at any time communicated to the council, or the treasury, as several other patents are; and therefore the said Earl, either as high-treasurer or privy-counsellor, could not have any knowledge of the same: nevertheless, if her late sacred majesty had thought fit to acquaint him with her most gracious intentions of creating any number of peers of this realm, and had asked his opinion whether the persons whom she then intended to create, were persons proper to have been promoted to that dignity? He does believe he should have highly approved her majesty's choice; and doth not apprehend that in so doing he had been guilty of any breach of his duty, or violation of the trust in him reposed; since they were all persons of honour and distinguished merit, and the peerage thereby was not greatly encreased, considering some of those created would have been peers by descent, and that many titles of honour were then lately extinct. And the said Earl believes many instances may be given, where this prerogative hath been exercised by former princes of this realm in as extensive a manner; and particularly in the reigns of king Henry the 8th, king James the 1st, and his late majesty king William. The said Earl begs leave to add, that in the whole course of his life he hath always loved the established constitution, and in his private capacity, as well as in all public stations, when he had the honour to be employed, hath done his utmost to preserve it, and shall always continue so, to do.

In answer to the further Articles of Impeachment exhibited against the said Earl: As to the first of these Articles he saith, that he believes, in or about the month of January, 1710, an expedition was projected, for making a conquest of the city of Quebec, on the river of St. Lawrence, Canada, or other possessions of the French king in North America; but denies he advised her majesty either to consent to the making such expedition, or to give orders for detaching any battalions of the forces in her majesty's service in Flanders, or to send any such battalions, or any squadron of men of war on the said enterprize: But having heard that the said project, or some expedition of the like nature, had been some time before considered in a committee of council, and afterwards laid aside for that time, and not being fully apprized of the whole project, nor so well versed in the affairs of that part of the world as others, who had more opportunity of knowing them; and lest the expedition might not at that time prove so feasible or advantageous as others of better knowledge in those matters than himself did expect, he did all that he apprehends his duty required to prevent the putting the same in execution, and expressed his concern at it to some persons about the queen. And having so far shewn his opinion of the said design at that time, believes it would not have been thought proper for him to have appeared at the meetings, where the methods only of carrying on the expedition were to be adjusted; of which meetings there had been but few, before a misfortune befel him, which confined him to his bed. But the said Earl denies, that he knew the said expedition was dangerous or destructive, nor did he hear that it was laid aside formerly by a committee of council, as dangerous or impracticable, but only as improper in the circumstances of affairs at that time: Nor doth the said Earl know or believe the said expedition was set on foot with any design to promote the interest of the French king, or to weaken the confederate army in Flanders, or to dissipate the naval forces of this kingdom. And when others of her majesty's council, better acquainted with that affair, did judge it to be proper and practicable, he did not think it became him, upon the strength of his own single judgment, further to oppose an expedition, which if it had succeeded, most certainly would have given a great and sensible blow to the settlements and trade of France in that part of the world. And the said Earl, with good reason, is persuaded your lordships will not think it unfit that her majesty should take the opinion of those who better understood affairs of that nature; or that your lordships can judge the said Earl in that respect to have been wanting in his duty to her majesty; but hopes it will be rather an evidence of his fidelity to the queen and his country, that he so far discouraged what in his own judgment he was diffident of. However he is satisfied, that those of her majesty's council who did approve the expedition, acted therein with a sincere desire for the public good, notwithstanding the ill success it was attended with; which might chiefly be owing to delays by contrary winds, and other unforeseen accidents. And he doth not believe, that her majesty's allies did suffer any prejudice, or the common enemy receive any advantage by the detaching of forces from Flanders to serve on this enterprize; and is informed, that to prevent any such danger, her majesty's general who commanded at that time in Flanders, had orders for providing other forces in their place, if he judged it necessary. And the said Earl doth acknowledge, that the sum of 28,000*l.*, or thereabouts, was demanded at the treasury about June 1711, on account of arms, accoutrements, goods, and merchandize, said to be sent on the said expedition to Canada; but he saith, that he was so far from advising her late majesty that the said sum should be issued and paid, that on the contrary he put a stop to the payment of the same, until he had done all he could at that time to examine into the expenditure of the said money: But being then high treasurer of Great Britain, and having received her majesty's orders to pay the said sum, and not being able, with his utmost precaution then, to discover any just cause why it should not be paid; he did afterwards, in obedience to those orders, and according to the duty of his place, countersign a warrant to the paymaster of her majesty's forces for the payment of the same, pursuant to

which, he believes the same was issued and received. And as to that part of the said Article, which charges the said Earl with employing his arts or credit to keep the House of Commons from examining that affair; he begs leave to say, that whatever suspicions he might entertain in his own mind, he did not upon examination find, that there was sufficient proof to justify the laying them before either House of Parliament. And although he had been informed, that the papers relating to that expedition were laid before the last, and have been all along in the power of the present House of Commons, yet he hath not heard that any fraud hath been made out in that affair, notwithstanding the gentlemen who had them under their inspection neither wanted abilities to make the utmost discoveries, nor could be supposed to be prevented therein by any influence of the said Earl: And he hopes it will not be imputed to him as a fault, if he had used any skill or credit to keep the House of Commons from examining this affair at that juncture, when by an unseasonable enquiry, before a proper proof could be had, the fraud, if any such there were, would be likely for ever to escape unpunished. But the said Earl denies that he ever exercised or had any arbitrary power or influence, either in her majesty's private council, or the great council of the nation, or entertained any design to prevent the justice due to the queen or the nation, or that any discovery had been made to him, further than what might give suspicion to one who was always jealous (as became him) of any misapplication of the public treasure. And the said Earl saith, that he is not conscious, that by any letter or memorial to her majesty, he hath acted contrary to his duty; but humbly hopes he may be allowed to observe, that it would be a matter of particular hardship, and what seems to him inconsistent with the rules of government, and without precedent, if the most secret and intimate papers and letters, wrote to that most renowned and pious princess, her late majesty, by her own special command, and for her own private perusal, should be imputed to any as a crime; and if any quotation from any such letter or paper could be alleged against the said Earl, he doubts not but there might appear from other of her majesty's private papers what would justify him in many particulars wherewith he is charged, and would give further proof (if it were needful) how tender and affectionate her majesty was to all her subjects.

In answer to the Second Additional Article, the said Earl doth admit, that about October, 1711, her late majesty did sign a warrant directed to him, then her treasurer of Great Britain, for the issuing and payment of the sum of 13,000*l.* to John Drummond, esq. in the Article named; and that on or about the 24th of November following, in pursuance of the said warrant, under her majesty's sign manual, he the said Earl did sign a warrant for the payment of the said 13,000*l.* but for more certainty, begs leave to refer to the said several warrants when the same shall be produced: and the said Earl takes the words "for special services of the war," to have been inserted by mistake of the clerks; for he absolutely denies that he gave any direction for those words, or any other of like import, to be inserted: and he believes all the clerks of the Treasury know, that the monies which arose from the sale of tin were the queen's proper money for the support of her houshold, and such occasions as she should please to direct, and not appropriated to the services of the war; although sometimes it hath been practised that loans have been taken upon tin-tallies for the service of the war, and other public services, and afterwards repaid to the civil list, which might possibly give occasion for such mistake. And the said Earl saith, that having been acquainted with the services the said Mr. Drummond had performed, by order of the late earl of Godolphin, in borrowing money upon tin at a low interest, the said Earl asked Mr. Drummond's consent that a sum in tin-tallies might be struck in his name, and with such consent did direct, that orders amounting to the sum of 13,000*l.* should be charged in the register of the Exchequer, on the monies arising by the sale of tin, in the name of the said Mr. Drummond, who afterwards, before his going to Holland, endorsed the said orders at the said Earl's request, and left them in the Treasury; but how long it was before the said orders were endorsed, or how long they remained afterwards in the Treasury, the said Earl doth not particularly remember; but doth not acknowledge that the said orders and tallies came afterwards to his own hands, and were disposed for his own use. But in order to lay the true state of this affair before your lordships, the said Earl humbly represents, that upon his first attending the late queen, after his being wounded, her majesty had the goodness to tell him, that she designed him a sum of money: upon which he represented to her majesty the bad condition of her civil list: but several times after her majesty asked him, why he did not find a way for receiving the money she intended him, and bring the necessary warrant for that purpose? He still urged the same reason against it, and for near six months made no step in it, till at last her majesty was pleased to say, she was resolved to have it done. And as her majesty had, in matters of her bounty, made use of tin-tallies for other persons, she was pleased to mention the same herself, and ordered proper warrants to be prepared for the sum which her majesty of her royal bounty intended him: that after her majesty had so positively signified her royal pleasure, to bestow such marks of her favour upon the said Earl, the said tallies and orders were struck in Mr. Drummond's name, with her majesty's knowledge, and at the said Earl's nomination; and from that time the same were kept under the said Earl's direction for his use. And the said Earl was advised, that nothing further was requisite to

be done, after the assignment of the said Mr. Drummond, for securing the said Earl's interest in the said tallies, till an accident happened which made it necessary for further security to have the said warrant as a declaration of trust, which was accordingly signed by her majesty, and is to the effect following:

"ANNE *R.*

"Whereas in the year of our Lord, 1711, in consideration of the many good, faithful and acceptable services which before that time had been performed unto us, by our right trusty and well-beloved cousin and counsellor Robert earl of Oxford (then and now our high treasurer of Great Britain) which services have tended to the quiet, safety and prosperity of us and our realms, though the same were accompanied with great difficulties upon himself, and hazards to him and his family. And particularly reflecting upon the impious attempt made upon his life: we did then fully resolve, as a particular mark of our favour, and of our gracious acceptance of the said Earl's services, to bestow upon him a sum in ready money. But the said Earl representing to us, that the arrears then due to our servants and tradesmen, chargeable upon our civil list, were very great and pressing, we did therefore agree and determine, that the said Earl should have to his own use the several sums amounting to 13,000*l.* comprised in certain orders of loans, bearing date in or about the 11th day of December, 1711, in your name, and charged upon the register in our Exchequer on the monies arising by sale of our tin, which orders are not yet in course of payment. Now we do hereby declare and make known, that the said several sums amounting to 13,000*l.* contained in the said orders, and the interest thereof due and to be due, are and shall be the proper monies of the said earl of Oxford. And we do hereby direct and authorise you to transfer and assign the said orders, and the whole right and benefit thereof, to the said Earl and his assigns, or to such person or persons as he shall appoint in that behalf. And in case any the monies due, or to be due, or payable upon the said orders shall come to your hands; in such case our pleasure is, that you forthwith pay over the same to the said Earl, his executors, administrators or assigns, to his and their own use and behoof, without any account to be therefore rendered to us, our heirs or successors. And this our warrant, or an attested copy thereof, shall be your sufficient warrant and discharge for so doing.—Given at our court at Windsor-castle, the 14th day of December, in the 12th year of our reign, Anno Dom. 1713."

"To our trusty and well-beloved
John Drummond, esq."

And the said Earl believes the said warrant was drawn by Mr. Lowndes secretary to the Treasury, and by what means the same was omitted to be entered in the Treasury, he knows not; but upon hearing there was a discourse about the said 13,000*l.* in tin tallies, he sent a copy of the said warrant to the officers of the Treasury, without signifying any desire to have the same entered, well knowing it received its authority from the sign manual, which wanted no additional force from any entry thereof in the Treasury books. And the said Earl saith, that her majesty was pleased, of her mere goodness and bounty, and of her own free will, to give him the said sum of money in reward of his faithful services, and for his sufferings in her service. And the said Earl saith, that the said grant, according to the discount upon those tallies at that time, amounted to the sum of 10,000*l.* or thereabouts; wherein he acknowledgeth the great bounty of her majesty, and takes notice, that grants much larger have been made from the crown to other ministers of state, while the necessities of the crown have been equally pressing. And the said Earl doth not know that in this or any other part of his administration, he ever was guilty of any corruption, or any breach of his oath or trust as high treasurer of Great Britain; or that he did in any manner abuse her majesty's goodness, or make an ill use of his access to her majesty, or embezzle the public treasure, or did at any time knowingly injure or oppress her majesty's subjects; but on the contrary, the said Earl saith, that he managed the public money in the most frugal manner, in order to lessen, as much as might be, the charge of the war; and to ease, if he could, the Commons of Great Britain from all grievous taxes. And in further vindication of himself against all the imputations of avarice or corruption insinuated in this Article, the said Earl saith, that in every employment to which he was called by her majesty's favour, he was always contented with the accustomed incomes and profits of the said employments, without endeavouring to encrease his gain by unwarrantable or extraordinary perquisites; that whilst he was in any office of trust about her majesty, he never abused that trust in making any manner of profit or advantage to himself, either by the disposal of places in his own gift, or by the recommendation of persons to her majesty for such as were granted immediately by herself; that neither in nor out of place did he ever receive any pension from the crown; that as he came with clean hands into her majesty's service, so he went not only with clean, but almost with empty hands out of it, having spent therein most part of the profits which accrued to him from the places he enjoyed; so that at this time, notwithstanding all the advantages he received from them, and the extraordinary bounty of the queen to him, in this Article mentioned, he can with great truth affirm, that his private fortune hath received very inconsiderable addition thereby.

In answer to the Third Additional Article, the said Earl saith, that Matthew Prior, esq. being employed by her majesty at the court of France, warrants were signed in the usual form for payment of several sums of money,

to the said Mr. Prior, which he believes from the 27th of August, 1712, to the 10th of July, 1714, might amount to the sum of 12,360*l.* as in the said Article is set forth; and he believes he did pay, or cause to be paid, at several times the said sums, pursuant to the authority he had from her late majesty for that purpose, which he conceives was not only lawful, but a duty incumbent on him. He further saith, that he doth not know that by any law there ought to be certain appointments or allowances for the maintenance and support of ambassadors, envoys, plenipotentiaries, and other public ministers of the crown in foreign courts; but that her majesty was at liberty to vary such appointments, and the manner of paying them, as she in her wisdom should think fit, out of any funds appropriated to the civil list. He doth believe, that there are several instances where persons employed to negociate matters of importance, as ambassadors or plenipotentiaries, have been allowed 1,500*l.* for their equipage; 100*l.* a week for their ordinary entertainment, and 1,600*l.* for extraordinaries, and likewise further sums for services performed by special order: And if the said Mr. Prior had been paid upon that foot, he would have been intitled to a greater sum from the crown, for the time wherein he was employed by her majesty as aforesaid, over and above all disbursements for special services. And the said Earl saith, that he takes the said Matthew Prior to have been sent by her majesty into France for her majesty's service, and in order to carry on the negociations of a general peace; but denies that he was any creature of the said Earl, or sent by the said Earl into France, or that he carried on any negociations of the said Earl, or that her majesty was prevailed on by his counsels to send the said Matthew Prior as her plenipotentiary to the French king, without the privity of or any communication with the allies, or that the said Earl used the least contrivance for carrying on, or did carry on or promote any dangerous practices with the ministers of France, or the enemies of her majesty or her kingdoms, or that he did at any time combine with the said Matthew Prior to defraud her majesty of any sum of money whatsoever, under colour of his employment; or that the said Matthew Prior was sent into France with the character aforesaid, without any settled appointment or allowance for any such end; or that he the said Earl did give the said Matthew Prior an unlimited credit or promise to pay him any bills whatsoever, other than what he should be duly authorised to pay; or that any bills of exchange, in the said Article mentioned, were drawn in pursuance of any such contrivance. The said Earl saith, that Thomas Harley, esq. having been twice sent by her late majesty to the court of Hanover, he the said Earl being then high-treasurer of Great Britain, paid, or caused to be paid, to the said Mr. Harley, the sum of 5,560*l.* or thereabouts, by authority from her majesty, and according to the duty of his office, out of monies appropriated to the use of the civil list. And he believes, that if Mr. Harley had received an allowance in proportion to what hath been paid to ambassadors, it would have amounted to a greater sum. But denies, that the said sum of 5,560*l.* or any part of it, was paid without authority, or for promoting any wicked purposes of the said Earl, or that he did either illegally or fraudulently issue, direct, or advise the direction or payment of any sum or sums of money out of her majesty's treasury, to any person whatsoever, or that he ever entered into any combination with the persons abovementioned, or any other person whatsoever, to defraud her majesty of any of the public money which he was entrusted with the management of.

In answer to the Fourth Additional Article, the said Earl denies, that he ever held any correspondence with Mary the late consort of the late king James the 2nd, either by the means of Mr. Prior, or by any other means whatsoever, or that he ever intended, or had the least design any way to promote the interest of the Pretender; nor doth the said Earl know or believe that monsieur Gaultier, in the said Article named, was entrusted or employed as an agent between any of the ministers of Great Britain and France, in transacting any affairs relating to the Pretender; and denies that he the said Earl had any conferences with him the said monsieur Gaultier on that subject: Nor doth the said Earl know or believe that he the said monsieur Gaultier was empowered to concert with him the said Earl, particularly the settling any payment or remittance of the annuities hereafter mentioned, or any other yearly sum to be paid or remitted out of her majesty's treasury into France: Neither had the said Earl the least design, that any of the fruits or advantages of the peace should be made an offering to any adherent of the Pretender; nor did he agree or undertake to procure the payment of the yearly sum of 47,000*l.*, or any other yearly sum, to the use of the said late consort, during her life. But the said Earl doth admit, that the late king James the second, by letters patents under the great seal of England, bearing date on or about the 28th day of August, in the year 1685, granted unto Lawrence earl of Rochester, Henry earl of Peterborough, Sidney lord Godolphin, Robert Worden, esq. and sir Edward Herbert, kt. (who are all since deceased) divers annuities or yearly sums of money, amounting to 37,328*l.* 13*s.* 7*d.* payable out of the hereditary duty of excise, and the post office, and other revenues in the said letters patents mentioned, to hold to them and their heirs, during the life of the said consort, in trust for her: And by other letters patents, bearing date on or about the 3d day of December, in the year 1686, also granted unto the said consort a further pension, or yearly sum of 10,000*l.* to hold during her natural life; whereby the said revenues arising from

the hereditary excise and post office, and other the revenues in the said letters patents mentioned, became charged with, and were liable to the said annuities or yearly sums, as in this Article is mentioned. And the said Earl doth admit, that the said revenues were by several acts of parliament granted and settled during the life of his late majesty king William the 3d, for the use and service of his houshold and family, and for other his necessary expences and occasions; and after his demise, during the life of her late majesty queen Anne, were appointed to be for the support of her houshold, and of the honour and dignity of the crown; but saith, that in the same act of parliament whereby the said revenues are so appointed, there is a general saving to all and every person or persons of all such rights, titles, estates, interests, claims, and demands whatsoever, of, in, or to, or out of the said revenues and hereditaments, or any of them, as they, or any of them had, or ought to have had before the making the said act, as fully, to all intents and purposes, as if the said act had never been made. And the said Earl doth admit, that an act of parliament was made in the 12th year of her late majesty's reign, whereby the sum of 500,000*l.* for the causes therein mentioned, was to be applied in aid of the revenues or branches which were appointed for the support of her majesty's houshold, and of the honour and dignity of the crown, for, or towards the paying and discharging such arrears of salaries, wages, diet money, and other allowances, and such debts for emptions, provisions, and other causes, as should appear to be due and owing to her majesty's servants, tradesmen, and others. But the said Earl saith, he hath heard that the said late consort of the late king James the 2d, esteeming herself to be entitled by the laws of England, by virtue of the said letters patents, to the several sums of money therein mentioned, did, by letter of attorney, empower and authorise the said monsieur Gaultier to demand and receive for the only use, benefit, and behoof, all sums of money which from and after the feast of the Annunciation of the Blessed Virgin Mary, 1713, were become due and payable upon the several annuities, amounting to 37,328*l.* 13*s.* 7*d.* and the other annuity or yearly sum of 10,000*l.* and to give acquittances and discharges for the monies he should so receive to her only use and behoof as aforesaid; and that thereupon he the said monsieur Gaultier applied himself to her majesty for the payment of the monies which were incurred or grown due on the said several annuities, from the said 25th day of March, 1713, and that her majesty was pleased to sign a warrant, directed to him the said Earl, being then her majesty's high treasurer, or the high treasurer or commissioners of the treasury for the time being, in the words or to the effect in the said Article set forth; but for more certainty refers himself to the said warrant, when the same shall be produced. And that in obedience to her majesty's commands signified by the said warrant, he the said Earl did direct two several warrants to the auditor of the receipt of the Exchequer, to the effect in the said Article set forth; but for more certainty refers to the said several warrants when the same shall be produced. But he denies he advised her majesty to sign the said warrant of the 23d of December, 1713; but when such warrant was brought to him, and he knew that the jointure of the said consort had been confirmed by act of parliament; and had heard that by some private article of agreement at the Treaty of Ryswick, provision had been made in relation to it; and the legality of the demand not being doubted by her majesty's counsel learned in the law, the said Earl thought it his duty to pay obedience to it. And the sum of 500,000*l.* intended to be raised by the said act of the 12th year of her majesty's reign, together with a great additional sum in tallies, being designed for discharge of her majesty's debts, the said Earl thought himself sufficiently authorised to direct that the said sum of money mentioned in the said warrants, which he was advised was a debt from her majesty, should be paid out of the said 500,000*l.* Yet the sum in the said warrants mentioned or any part thereof, was not paid out of the said appropriated sum of 500,000*l.* or otherwise; but the whole sum of 500,000*l.* was applied to other uses for which it was appropriated. And the said Earl humbly hopes, that he hath not hereby betrayed the honour of her late majesty, or the imperial crown of these realms, or acted contrary to his duty. And the said Earl doth acknowledge, that the said monsieur Gaultier coming into England with letters of credence from the French king to her late majesty, after having resided some time in England, her majesty was pleased, before his departure hence, to direct a present should be made to the said monsieur Gaultier, as hath been usual in like cases to public ministers: And he believes her said majesty was the rather inclined to make such present to the said monsieur Gaultier, because the said Earl hath heard, and takes it to be true, that the said Gaultier had been instrumental with the French king to obtain the delivery and release of those poor Protestants who had suffered aboard the gallies on account of their religion, whose rescue from slavery her majesty, out of her known zeal to the Protestant religion, and out of her wonted piety and compassion to the confessors in so good a cause, had much at heart, and had prevailed therein beyond expectation; it being what by his majesty king William had been attempted in vain, and was thought by many impossible ever to be obtained: And the good offices of the said Gaultier in that affair having been very acceptable to her majesty, she was pleased to encrease his present in respect thereof, and therefore ordered it to be paid in the same manner as had been done to others, whose present her majesty thought fit to augment. And for this

end her majesty, about the time in this Article mentioned, did sign a warrant directing the payment of 1,000*l.* sterling to Daniel Arthur, esq. in the same Article mentioned, to the intent it might be paid to the said monsieur Gaultier on the account aforesaid. And the said Earl believed the said monies were issued and paid accordingly, and doth not apprehend he hath therein acted contrary to his duty.

In answer to the Fifth Additional Article, the said Earl doth admit the sovereign of this realm may refuse to receive any natural-born subject who hath committed, and is under the guilt of high-treason, as a public minister, or with any character from any foreign prince, state, or potentate: And that where such person is known to be guilty of such crime, it may in most cases be fit so to do; but the said Earl apprehends that the sovereign is the proper judge whom to refuse or receive with such character. The said Earl believes that a person styling himself, or commonly known by the name of Lilesh or Lawless, did about the year 1712, or 1713, come into England with letters of credence to her majesty from the king and late queen of Spain, and authority to treat about carrying British merchandizes to the Spanish West-Indies; and that her majesty was pleased to admit such person with such letters of credence; and before his return to Spain was pleased to order, for the use of such person, the sum of 1,000*l.* to be paid out of the monies appropriated to the civil list, which the said Earl, in obedience to such orders, caused to be paid, and humbly apprehends it was his duty so to do. But the said Earl believes, that when the said Lilesh or Lawless was so admitted, he was generally thought to be a natural Spaniard, and that from the advantages of those licences which he brought for carrying the British merchandizes to the West-Indies, he expected much a larger present: However, the said Earl denies that he knew, or was informed, before the arrival of the said Lawless in England, any thing of his coming hither, nor after his arrival did he see him, or know of his being here, before he had been introduced to her majesty, it being usual for public ministers to be introduced by those servants of her majesty to whose office it belongs, as matter of duty and common dispatch, without consulting therein other ministers of state. And upon the notice taken of this affair formerly in the House of Peers, it appeared that the noble lord who introduced the said Lawless to the queen, by virtue of his office, did it as of course, and did not then know he was other than a native of Spain. And the said Earl saith, that of a long time after he had been so introduced, the said Earl neither knew nor heard that he was other than a natural Spaniard: But when the said person had continued in England a considerable time, there was a rumour, and the said Earl was afterwards informed that he was a native of Ireland, and departed out of that kingdom in his youth, and had since been in the Spanish service; but doth not know, nor was informed, that he had committed or been guilty of high-treason, or that he had served the late king James the 2nd in the war in Ireland against king William the 3rd, or had followed the said king James the 2nd into France, or been in his interest or service, or had been in rebellion against king William, or in arms against the late queen. And the said Earl having no notice of the said person's arrival before his being admitted to her majesty, nor any knowledge of any crime he was guilty of, submits whether it shall be imputed to him as any want of duty, that he did not advise her majesty against admitting or receiving him in the character aforesaid, or that he did, by her majesty's authority, meet, confer, or negociate with him concerning any affairs about which he was authorised to treat (in case he had so done, which however the said Earl doth not admit) or that by authority from her majesty he paid the said sum of 1,000*l.* to the said Daniel Arthur, which after came to his use. But the said Earl doth deny, that he advised her majesty to sign the warrant for the payment of the said 1,000*l.* or gave any directions for payment thereof contrary to what was intended by her majesty. And the said Earl admits, that some other sums of money (which might amount in the whole to 915*l.* or thereabouts) were paid in satisfaction of monies advanced to the said Lawless, as part of the monies agreed to be advanced to his Catholic majesty by the Assiento contract: But denies that he directed the payment of any other monies whatsoever out of her majesty's treasury to the said Lilesh alias Lawless, or knows that any other monies were paid to him, beside the aforementioned sum of 1,000*l.* and the monies paid in satisfaction of what was advanced to him towards the part due to his Catholic majesty by the said Assiento contract. And the said Earl never assumed the supreme direction in her majesty's council, neither was he advising that the said person should be introduced to her majesty, or should be received or treated by her ministers under the disguised name of Don Carlo Moro, or should at all be received as a public minister here. And the said Earl doth acknowledge, that the House of Lords with commendable zeal made such Address, and came to such Resolution, and that her majesty made such Answer, and issued such proclamation, as in the said Article is mentioned. And as the said Earl had always the highest regard to the safety of her majesty's person, the security of the Protestant Succession, and advice and resolutions of the House of Peers; so he denieth that he had the least knowledge that the said Lilesh alias Lawless had ever been minister or agent to the Pretender at the court of Madrid, or the least suspicion that he was sent into England to promote the interest of the Pretender in these kingdoms, nor is he conscious to himself, that he hath done any thing to expose the person of her most sacred majesty; to enervate or render in-

effectual the advice of parliament, or her majesty's declaration; to countenance any emissary of the Pretender, or encourage his adherents, to the danger of the Protestant Succession as by law established in the serene House of Hanover: But on the contrary is persuaded his conduct in that affair is so well known, as not to need any further justification; but if it should at any time be thought necessary he is able to produce those proofs of it, which are the best authority in the world for, his vindication.

To the Sixth Additional Article, the said Earl hath been informed, and doth believe it may be true, that after several unsuccessful attempts by her late majesty, in conjunction with her allies, to establish his present imperial majesty upon the throne of Spain, instructions in writing were given to Mitford Crow, esq. about the 7th day of March, 1705, taking notice her majesty had been informed, that the people of Catalonia were inclined to cast off the yoke imposed on them by the French, and to return to the obedience of the House of Austria; and that her majesty, desiring to maintain and improve that good disposition in them, and to induce them to put the same speedily in execution, had made choice of him to carry on so great a work, for the advantage of her service, and the good of the common cause, as was the making a Treaty with the Catalans or any other people of Spain, for the purpose aforesaid: and that the said Mitford Crow was thereby empowered to give the Catalans, or other Spaniards, assurances of her majesty's utmost endeavours to procure the establishment of all such rights and immunities as they had formerly enjoyed under the House of Austria, and the confirmation of such titles as had been conferred on any of them by the duke of Anjou: And that for their further satisfaction, her majesty had sent to king Charles the 3d for powers for confirming the same to them, and was willing, if they insisted on it, to become guarantee that it should be done. And the said Earl hath been likewise informed that her majesty, in a commission granted to the said Mitford Crow, expressed, that she thought fit to enter into a Treaty with the principality of Catalonia, or any other province of Spain, on condition they would acknowledge and receive Charles the 3d as lawful king of Spain, and utterly abdicate the House of Bourbon, and join their forces with her majesty's; and that her majesty was pleased also to sign and deliver to the said Mitford Crow, credential letters, directed to the nobility, magistracy, and other officers of Catalonia, or any other province of Spain, desiring them to give faith to every thing the said Mitford Crow would tell them in her majesty's name: And that instructions were likewise given to the earl of Peterborough and sir Cloudesly Shovel about the time and to the effect in the said Article mentioned; and that a Manifesto or Declaration was afterwards published by the said earl of Peterborough, to the effect in the said Article set forth: But the said Earl denies, that such Manifesto or Declaration was prepared by his advice or privity. And the said Earl believes it may be true, that some part of the nobility, clergy, and inhabitants of the principality of Catalonia, and also the inhabitants of the island of Majorca, did afterwards acknowledge king Charles the 3d (now emperor) for their lawful sovereign, and did join their arms with those of her majesty and her allies against the present king of Spain; but by what motives they were induced thereunto, the said Earl doth not know. And the said Earl doth acknowledge, that for some time the arms of her majesty and her allies in Spain were attended with considerable successes, in which the bravery of the Catalans appeared, and the forces of the confederates twice entered the capital city of that kingdom: by which signal conquests, and the great supplies that have been granted by parliament for their assistance, the said people were under the highest obligations of gratitude to her majesty: but the advantages those successes had given king Charles the 3d being lost, her majesty found the burthen of that war very heavy to her subjects, the conquest of Spain for the present emperor impracticable, and after the accession of the empire and descent of the hereditary countries to him, esteemed inconsistent with the interest of many of her allies, and therefore thought it necessary for the good of her people, and the tranquillity of Europe, to enter into negociations for a general peace. But the said Earl denies that he entered into any conspiracy for subjecting the Spanish monarchy to the House of Bourbon, or ever had the least design of the ruin or destruction of any of the rights, liberties, or privileges of the Catalans; or that he ever formed any contrivance for abandoning them to the fury or revenge of the duke of Anjou, or his adherent; or for the extirpation of any of their rights, liberties, or privileges; or that he advised her majesty to give directions to the lord Lexington to acknowledge the duke of Anjou king of Spain, before any negociation of peace was set on foot, in form of law, between the crowns of Great Britain and Spain. On the contrary the said Earl saith, that by letters and papers sent by one of her majesty's principal secretaries of state to the lord Lexington, it will appear, that after her majesty had hearkened to the proposals for a general peace, for the good of her own people, and her allies, she used her best endeavours for obtaining the liberties of the Catalans, at the conclusion of the peace, and that his lordship was directed peremptorily and absolutely to insist thereon: Nor doth the said Earl know or believe, that any orders were ever sent from or given by her majesty, to any of her ministers, to recede from that demand; or that the said lord Lexington ever desisted from making the utmost efforts he could for obtaining it. And if from any measures of the Catalans, or of his imperial majesty, or from any other cause, her majesty's endeavours had not their full effect; the

said Earl conceives it cannot be imputed to any neglect of her majesty, or any want of duty in him the said Earl. He believes, that about the time in the said Article mentioned, his imperial majesty did enter into a convention or agreement for evacuating Catalonia; and that her majesty, out of inclination to perform her best offices to the emperor, was prevailed on to become one of the guarantees thereof; but denies, that his imperial majesty was necessitated by any practices of the said Earl to make any such convention, and is ignorant for what cause his imperial majesty, whom it most concerned, omitted, in such convention, to make express and positive stipulations for the liberties of the Catalans. If it proceeded from any dependence upon the declaration of her majesty, to interpose her best offices on their behalf, and the promises of the French king to join his endeavour therein; he is confident it will appear, her majesty's best offices were employed in that affair, when it is considered what repeated instances she made by her ministers, and in the most pathetic manner, to obtain for them the privileges they desired. And that her majesty, by her earnest interposition, did obtain a grant and confirmation to all the inhabitants of Catalonia, of a perpetual amnesty and oblivion of all that was done in the late war, the full possession of all their estates and honours, and a further grant of all their privileges which the inhabitants of both Castiles (who of all the Spaniards were most dear to the king of Spain) enjoyed, or might at any time after have or enjoy; whereby the Catalans, if they obtained not all the ancient privileges they pretended to, received however in compensation thereof, the advantage of trading directly to the West Indies, and other privileges, to which they were never before entitled. And the House of Peers, upon consideration of several papers laid before them, relating to this affair, in pursuance of their Address to her majesty in that behalf, expressed their utmost thankfulness and satisfaction for her majesty's repeated and earnest endeavours for preserving to the Catalans the full enjoyment of all their just and ancient liberties. And it is probable her majesty had prevailed to obtain for them the ancient privileges and liberties, in the largest extent, if they had waited the event of her gracious interpositions in their favour, and not determined to carry on the war by themselves against king Philip, after the emperor had signed the convention for evacuating their country, which incensed the king of Spain in the highest degree, and was looked upon by him as the most obstinate rebellion. However, the said Earl saith, he never amused the Catalans with any expectations whatsoever, nor in any degree contributed to engage them in any obstinate defence against the duke of Anjou; nor advised her majesty to conclude a peace with Spain without security for the ancient rights, liberties and privileges of that people; or to send sir James Wishart with a squadron of men of war, for the purposes in the said Article mentioned: But believes her majesty might think herself obliged, by being guarantee to the said convention for the evacuating Catalonia, to send the said James Wishart into the Mediterranean with a squadron of men of war, although he knows not the orders or instructions given on that occasion; and humbly apprehends, that he cannot, in justice, be charged with any consequences from that unhappy people's refusal to comply in their submission to the king of Spain, upon the terms her majesty had stipulated for them.

Thus the said Earl has laid his case before your lordships, wherein he hopes he hath fully answered the several Articles exhibited against him: Yet, lest there should be any omission in his Answer, which may be made use of to his prejudice, he says, he is not guilty of all, or any of the matters contained in the said Articles, or any of them, in manner and form as they are therein charged against him; and humbly hopes that your lordships will excuse any imperfections or defects in the said Answer, with regard to expression or form; and impute whatever of that kind may appear, to the great weakness of body and ill state of health which the said Earl now labours, and hath for some months past laboured under; and that your lordships will be induced to make all farther due allowances in his favour, from the following considerations, which relate to the nature of the Charge in general, and the difficulties with which his defence of himself, against the particulars contained in that Charge, is, and must be attended.

Most of the Articles, with which he stands charged, relate entirely to the negociations of peace lately concluded at Utrecht; he doubts not but your lordships will consider, that he must of necessity be under great difficulties, in giving a full and particular account of such a great variety of facts as are contained in these Articles; that several of these facts concern transactions with the ministers of foreign states, who cannot be produced as witnesses in his defence, be their testimony never so material; that many steps and proceedings in an affair of this nature, where the interests of several parties, not only separate from, but some of them also contrary to each other, are to be adjusted, do require great secrecy and address in the management; and that in treaties between enemies, such terms are often proposed, and such arguments used, as carry a different appearance from the real intentions of those that treat: upon which accounts, it must be very difficult to set every thing that passed in the late negociations, with regard to the enemy, and to the allies, in a clear light, and to justify every step that was taken towards conducing them to the end proposed; especially since the account of those transactions, and of the reasons on which they were founded, cannot, as he conceives, be duly cleared, but by inspecting the entire series of letters and papers, which passed, during the continuance of those

transactions, and by comparing together such passages in them as might give light to each other, and to the whole: all which letters and papers are (as he is informed) now in the possession of the honourable House of Commons; nor was it thought fit, upon his humble application to your lordships, that he should be indulged with a copy of them.

He hopes it may not misbecome him, on this occasion, to observe to your lordships, that the House of Commons, by being possessed of those papers, have a fuller view of the whole progress, and of all the secret steps of that negociation, than perhaps was ever in the like case imparted to any House of Parliament; and they have therefore all the advantage possible towards forming the Charge against him upon the Articles of his Impeachment; whereas he (the said Earl) being destitute of all assistance from those papers, is under great and particular disadvantages towards making his defence, in the points whereof he there stands accused; and he is therefore humbly assured, that, as your lordships, on the one side, will not expect from him any such proofs of his innocence as can only be drawn from a perusal of those papers; so, on the other, you will not admit of all, or any of those Articles, as made good against him, unless the accusations therein contained be supported by the clearest and most unquestionable evidence, of which the nature of the facts is capable.

He submits it likewise to your lordships' consideration, whether in a negociation, drawn out into a great length, where the advice of all those in high trust about her majesty was to be taken, and where several persons were to be entrusted with the management of what was agreed upon, he can, with any colour of equity, be made answerable for advising and conducting the whole?

He desires also farther to observe, that every thing, with which he is charged, was done in the reign of a gracious princess, now deceased, who, by reason of the perfect knowledge she had of the ill state of affairs at home, of the advances made towards peace from abroad, and of the commands which she at several times laid on her servants, had been the best, and indeed could be the only competent judge, whether she was fraudulently dealt with, led by ill advice into measures which she did not direct and approve, or made an instrument of sacrificing the interests of her kingdoms to the enemy. It is with great grief that he finds such things suggested, as seem to lay a stain upon the character of so excellent a queen, whose memory he is confident will be for ever dear to this country: and therefore he takes leave, in the most solemn manner, to assure your lordships, that as far as he knows, or can remember, every thing relating to the transactions of peace was communicated to her late majesty, and maturely considered by her, before any thing was determined thereupon; nor was any step taken, but in pursuance of such determination.

As to the peace in general, he the said Earl thinks he has very good reason to say, that the queen had nothing more at heart, than to procure so great a blessing for her people; and that, when it was obtained, she had this satisfaction in herself, that she had taken the most proper measures to justify her conduct, both toward her allies and toward her own subjects: for, upon a review of her majesty's whole proceeding, in relation to war and peace, he believes it will appear, and hath in part appeared by the Answer of the said Earl to the said Articles, that, as her majesty entered further into the war than she was obliged by any treaties subsisting at the time of her accession to the throne, so she contributed more men and money towards the carrying it on afterwards, than she was engaged to provide by any subsequent treaties: that her earnest desires of peace being twice frustrated, when such conditions might have been obtained, as would have fully answered all the ends for which war was at first declared; that, all our successes and victories ending in the annual increase of the charge of England, without any further assistance from our allies, and her kingdoms being exhausted to such a degree (notwithstanding the great advantages obtained by her arms) that she was not able to continue the war, upon the foot it then stood, one year longer; whilst her allies refused to continue it, upon those equal conditions to which they were by treaties obliged: she was at last constrained, in compassion to her people, to hearken to the overtures of peace then made her from France, without relying further on the vain hopes of gaining more advantageous terms, by protracting the war a year longer. She had carried it on, for some time, under that prospect without reaping the benefits proposed, even at junctures that seemed most favourable to her demands, and to the pretensions of her allies: she had indeed, by that means, raised the glory of her arms; but she could not think this a sufficient recompence for the encreasing miseries of her people; and therefore resolved to lay hold of the opportunity, then offered to her, of ending the war by a peace, if it might be obtained upon terms every way just, safe and honourable: and those who were then employed in her majesty's councils, thought themselves obliged to second her good intentions in this case, and to obey her commands with all readiness.

The said Earl presumes, on this occasion, to mention to your lordships the saying of as wise a man, and as great a general as the last age produced, the duke of Parma; when France was in a far lower condition than now, being almost equally divided between two contending parties, and Spain was at the height of its glory, and he himself at the head of a Spanish army, supporting one of those parties, after Paris itself had been besieged by the other; it was his opinion (and the advice he gave to his master the king of Spain was grounded upon it) that if France were to be got only by

reducing its towns, the world would be sooner at an end than such a war. The queen seemed at this time, with better reason, to frame the like judgment; and it was therefore her pleasure, and a great instance (as the said Earl conceives) of her wisdom and goodness, to think of securing a peace while she appeared able to carry on the war (her armies being full and numerous) and before the exhausted condition of her kingdoms, and the impossibility, on her side, of maintaining so disproportioned an expence, was discovered by her enemies. At this juncture the queen entered upon a negociation of peace, with circumstances of great honour to herself; France applying to her first, on this account, previously owning her title, and acknowledging the right of the Protestant Succession; two chief grounds, upon which the declaration of the last war was built. And to the allies, it was conducted in the same manner as all Treaties of Peace in confederacies have ever been, and according to the known laws of nations in such cases; the first motion, and the several steps of it, as fast as they ripened into proposals fit for consideration, being without delay communicated to the States-General.

By the terms of this Peace, as all reasonable satisfaction and security due to any of the allies, by Treaty, were obtained for them by the queen, and their just pretensions effectually supported; so larger advantages were actually procured for Great Britain in particular, than ever had been demanded before, in any treaty or negociation between this and any other foreign state. The said Earl craves leave, on this occasion, to appeal to your lordships, whether all the ends for which the war was entered into have not, by this Treaty, been fully attained? Whether it does not appear, by the best of proofs, experience, that the kingdoms of France and Spain are by the conventions of this Treaty most effectually separated? And whether any other expedient could have been so successful to this purpose, as that whereby it is now happily brought about? Whether the balance of power in Europe be not now upon a better foot than it has been for 100 years past? Whether the advantages that have accrued to Great Britain, by this Treaty, do not appear, and have not appeared in the security of the Protestant Succession, and in his majesty's peaceable accession to the throne, with the universal applause of his subjects, in the additions made to our wealth by the great quantities of bullion lately coined at the Mint, by the vast increase of shipping, employed since the peace, in the fishery and the merchandize, and by the remarkable rise of the customs upon import, and of our manufacture, and the growth of our country, upon export? For the proof of which particulars he refers himself to those offices and books, wherein an authentic account of them is contained.

And as the terms of the peace were in these and other respects manifestly profitable to Great Britain: so the said Earl begs leave humbly to remind your lordships, that they were communicated to the parliament, and with their concurrence agreed on; that the peace thus concluded, was afterwards highly approved by both Houses; that solemn thanks were rendered to God for it, in all our churches, as well as in the churches of the United Provinces: and that her majesty received, on this subject, the hearty and unfeigned congratulations of her people, from all parts of her dominions.

These being the real effects, and this a true representation of her majesty's conduct in the affairs both of war and peace, the said Earl sees not how he, or any others then in her majesty's service, can be justly charged with betraying the interests of their own country, and of the allies, by negociating and promoting that peace, which then was, and (as he hath good grounds to believe) still continues to be very acceptable and advantageous to these kingdoms. And, if the peace itself be not condemned, and it be not even charged upon the said Earl as a crime, that he advised her majesty to conclude that peace, (neither of which appear to him from the Articles) he humbly conceives, it is a particular and extraordinary hardship upon him, that rough draughts and essays towards a peace, with other preliminary steps in a negociation, all leading to an end, which he looks upon to be just and profitable, and which is not in any of the Articles alleged to be otherwise, should be brought into so many distinct heads of accusation against him. For supposing that, in the process of so nice and difficult an affair, subject to divers unforeseen obstructions and events, any improper steps had been taken, which the said Earl doth not admit, but altogether, on his part, denies; yet, if things were at last conducted to a right issue, and ended in an honourable and advantageous peace, there can be (as he conceives) no just ground to find fault with the measures made use of to compass it, because they seemed, before the accomplishment, to have a different tendency; especially if it be considered, that scarce any peace hath been made by a confederacy, where less occasion was administered for jealousy among the several parties, and less reason given to complain that every nicety, required by the letter of such an alliance, was not strictly observed. And therefore he humbly hopes, that no steps taken for obtaining a peace, approved by the wisdom of former parliaments, shall by any succeeding parliament be accounted criminal, unless it can be made appear, that those steps were taken contrary to the queen's orders, or upon corrupt views of private advantage: But that no charge of this nature can be made good against him, he presumes to affirm, with great assurance; nor does he know of any other persons justly chargeable upon either of these accounts.

And as a further proof, that those who had the honour to serve her majesty in the negociations of peace, acted with upright views and intentions, and without being conscious to them-

selves of any failure in their duty, either to their queen or their country, the said Earl craves leave to observe to your lordships, that they never attempted to cover their actions from public censure by any pardon or indemnity, though they have very good reason to believe, that, had they judged or imagined themselves to have wanted such security, it might (through the goodness of the queen) have easily been obtained.

Nor can he think it an observation unfit to be made, that, in few of the Articles which concern the negociations of peace, the charge is founded on any breach of the laws of Great Britain; but it is in most of them chiefly on the supposed infraction of certain treaties and alliances with foreign princes, or states; and he conceives that such infractions of public treaties, where they do not particularly affect the interests of Great Britain, being cognizable by the laws of nations only, and not by those of the realm, are not wont to be examined into here at home, and prosecuted as criminal, but upon the complaint of some prince or state, pretending by that means to be injured, and lodging such complaint in some reasonable time with the prince, by the advice of whose ministers and servants such injury is supposed to have been done. But he knows not, that any such steps have been taken, since the peace, by any of the powers concerned: On the contrary, he believes, that all the allies, except the emperor and empire, made their peace with the enemy at the same time the queen did; and that none of them did afterwards complain to her majesty (who survived the said peace a year and almost four months) of any hardships imposed upon them in it; that the princes of the empire, who contributed very little to the war, might have concluded their peace upon reasonable terms, at the same time the other allies did; and would probably have done it, if the emperor on his part, had been willing to sign together with them, which, he is informed, at the conclusion of any general peace, has been seldom done; and particularly at the several conclusions of the peace of Munster, that of Nimeguen, and that of Ryswick, was not practised. And he submits it to your lordships' consideration, whether the emperor, having had all reasonable and equitable satisfaction made him for his pretensions to the succession of the Spanish monarchy, according to the terms of the Grand Alliance, could have any just reason to complain of the queen's ministers, or those of her allies, for concluding a peace, without insisting (on his account) upon impossible conditions; especially, when no provision is made, or offered to be made, to reimburse her majesty any part of those vast sums she had already expended, in support of his pretensions: whilst he failed of supplying his quota, almost in every part of the war, notwithstanding his new and great acquisitions. But whether the emperor, or any other of the allies, had any just ground of complaint, or not, still the said Earl presumes to insist, that it ought to have been signified to the queen; who upon such complaint, had she found any of her servants justly blamable, as disobeying her orders, or misleading her by their advice, into unjustifiable and dishonourable measures, might have punished them forthwith as their offences deserved: But nothing of this kind having been done, he humbly leaves it to be considered by your lordships, whether the silence of the powers concerned doth not carry in it a strong presumption, either that they had no real and just ground of complaint, in relation to the terms of the peace itself, or at least did not look upon the minister of the queen as any ways liable to blame on that account; and therefore he must again beg leave to express to your lordships his concern, that he should be charged as a criminal by the laws of this land, for supposed breaches of treaties with foreign states, which never were complained of, as such, by those states themselves, during the life of her majesty.

He desires farther to observe to your lordships, that wherever he is charged with carrying on a private and separate negociation, it is all along understood, with regard only to the States of the United Provinces; no step, that was communicated to them, being censured, upon this account: whereas all the other allies had, by virtue of their treaties with the queen, a like right to a communication of councils; and her majesty was under no stipulation to act more in concert with any one, than with all of them.

He does indeed allow it to have been most agreeable to reason, and to the interests of state, that the queen should act in a closer conjunction with Holland than with any other of her allies, because that, next to Great Britain, Holland bore the greatest share in the charge of the war: but then, he hopes it will be allowed also, that the States being more interested in the success of the war than England, and that England having submitted to a greater share of the burden, in order to procure, not only a fitting security for the States, but such as brought great advantages to them, though no benefit to England; it was very reasonable for the queen to take care of the interest of her own kingdoms some other way: And, since the advantages she demanded from the enemy, were such as she might obtain without any prejudice to the States, it was as lawful for her to negociate this matter without communicating it originally, and in the first rise of it, to them, as it was for her and the States to concert their mutual interests together, without the immediate and express participation of the other allies; which, being known to be done, without a design to defeat any of the main ends of the alliance, was never complained of by any of the confederates.—And as for the matters concerted previously with France, for the particular interest of England, without the original intervention of Holland, the States were so far from protesting against her majesty's measures, and condemning her

conduct in this respect, that their minister proffered several times, in their name, to have led the way, in the most difficult part of the whole negociation, and to have done his utmost to facilitate the conclusion of it, provided his masters might have a share in the Assiento contract, and trade to the Spanish West Indies; one of those advantages, which France had discovered its willingness should be allowed previously and entirely to England.

These few general observations the said Earl has thought fit to add in the close of his Answer to the several Articles of his Impeachment; not only in his own necessary vindication, but also in defence of her late majesty's conduct in the negociating and concluding a peace, the perfecting of which she esteemed the greatest happiness of the reign. Upon review of the Two-and-twenty Articles with which he is charged, as he is not conscious of any offence committed by him, with respect to any one of them, so it is with a particular concern and surprise that he reflects on these two, wherein he is accused of high treason, for endeavouring to procure Tournay to France, and so deprive the States of that intended part of their barrier; and for procuring Spain and the West Indies to the duke of Anjou, upon his renunciation of the crown of France: referring himself to what he has said in his Answer to both these Articles, he here further assures your lordships (and thinks it is sufficiently known both at home and abroad) that his opinion and endeavour, as occasion offered, always were for Tournay's remaining, as it does now, to the States General. And as to the latter, he doubts not but that what has lately happened in France, is a convincing proof to your lordships, and to all the world, that the renunciation was the best expedient that could have been proposed towards hindering the two kingdoms from being united under one and the same monarch; that that branch of the Treaty which relates to this expedient, has fully answered its end, and made good the character given of it by the queen, That it would execute itself; and therefore, that whoever advised this method of separating the two crowns, was so far from being guilty of any traitorous design, that he eminently promoted the welfare of Great Britain, and the good of Christendom.

The said Earl, with all the assurances of an innocent man, begs leave to repeat, that as well in this, as in all other affairs of state, in which he had the honour to be employed by her late majesty, he ever acted according to the best of his skill and judgment, with sincere desires and intentions to serve the public, and without any view to his own private advantage. As he was in several great stations under her majesty, he came into all of them by her own special command, without his seeking or desiring them, and he served her in all with the utmost respect, zeal, and faithfulness. And while he continued in those stations for many years, it was with great wonder and pleasure that he observed, how her majesty's whole thoughts, endeavours, and time were divided between her duty to God, and her love to her people; whose good and security she preferred always to her own ease, and often hazarded her health and life itself to procure it. He knew that the most effectual way for one to recommend himself to her good opinion, was to act upon the same principles of justice and love to his country that she did: and as she abhorred the thoughts of any thing burthensome or injurious to her people; so she often expressed herself with the greatest satisfaction and delight, when she reflected on the advantages obtained by her for her own subjects, and the quiet and repose she had gained for Europe, by that just and honourable peace, for which, as the present age doth, so generations to come will, bless the memory of that excellent and renowned queen. OXFORD.

L. H. Steward. Read the Replication of the House of Commons.

The Clerk read the Replication as followeth:

THE COMMONS' REPLICATION TO THE ANSWER OF ROBERT EARL OF OXFORD AND EARL MORTIMER.

The Commons have considered the Answer of Robert earl of Oxford and earl Mortimer, to the Articles of Impeachment exhibited against him, by the knights, citizens, and burgesses in parliament assembled; and do with astonishment observe, that the said Earl, instead of giving a reasonable and pertinent Answer to the just and heavy Charge brought against him by the Commons of Great Britain, has presumed not only to deny his advising and being concerned in any matters of state, in the Articles charged against him, though confessed to be done under an administration wherein he was notoriously the first minister and chief director; but has also joined therewith a false and malicious libel; laying upon his royal mistress the blame of every thing, which by impeding upon her, he had effected against her honour, and the good of his country; thereby attempting to reflect upon the honour and justice of the House of Commons, and to cast an odium upon their proceedings against him, as tending to asperse the memory of the late queen.

But the Commons are of opinion, that if it were possible to add to the heavy load of guilt, in which the treasons and other most flagitious crimes committed by the said Earl have already involved him; this base and ungrateful attempt, to impute them to his royal mistress, must bring such a new weight of infamy upon him, and so justly provoke the indignation of the Commons, that they might think themselves obliged to demand your lordships' immediate justice, for this unwarrantable attempt upon the honour of the late queen, and the proceedings of parliament.

But the Commons being sensible that the treasons and other crimes whereof the said Earl

stands impeached, and the necessity of bringing him to speedy and exemplary justice, require that all occasions of delay should be avoided; and not doubting that your lordships will in due time vindicate the honour of the late queen, and of the Commons of Great Britain, and the justice of their proceedings: the Commons do aver their Charge against the said earl of Oxford and earl Mortimer for High Treason, and other High Crimes and Misdemeanors, to be true; and that the said Earl is guilty of all and singular the Articles and Charges therein respectively contained, in such manner as he stands impeached; and that the Commons will be ready to prove their Charge against him, at such convenient time as shall be appointed for that purpose.

L. H. Steward. Robert earl of Oxford and earl Mortimer, it has been usual before the Commons proceed, to say something from this place to persons in your lordship's present condition; partly by way of exhortation to a reasonable confidence in the great honour, justice, wisdom, integrity and candour of their judges, their peers, the House of Lords in parliament assembled; and partly by way of direction, to assist them in their behaviour and conduct during the course of their trial.

But considering the many great offices your lordship has borne in the state, your long experience and known learning in all parliamentary proceedings, I cannot but think it would seem improper for me to be speaking to your lordship in that matter.

Wherefore I proceed barely to acquaint your lordship and others whom it may concern, with such orders as the Lords have made, which it is fit should be taken notice of thus early in this trial.

1. Your lordship, and all other persons who have occasion to speak to this Court, must address your speech to the Lords in general, and not to any lord in particular.

2. Your lordship's counsel may be present at the bar, in order to be heard to any point or matter of law, if such shall arise on either of the Articles for High Treason, and that you may make your full Defence by counsel, if you think fit, on the Articles for High Crimes and Misdemeanors, as well on matters of fact as of law.

3. That your witnesses are to be examined on oath as well to the Articles for High Treason, as those for High Crimes and Misdemeanors.

L. H. Steward. My lords, the distance between this place and the bar is so great, that I hope your lordships will excuse me, if I go to the table, for the better hearing of what shall be said during this trial.

Lords. Ay, ay.

Then the Lord High Steward went down, and seated himself by the table.

Serj. at Arms. O yes, &c. (as before.)

L. H. Steward. Gentlemen of the House of Commons, you will be pleased now to proceed.

Mr. Stanhope. My lords, the distance of the Lord High Steward from this place, may have been the occasion, that we have mistaken something that fell from thence; we do therefore desire to avoid all mistakes (and I believe we might be mistaken) for we understood my Lord High Steward, that counsel should be allowed the prisoner at the bar, as well to the Defence of the High Treason, as to the High Crimes and Misdemeanors; it is possible we misapprehended his lordship, but we hope his lordship will be pleased to explain it to us.

L. H. Steward. To prevent mistakes, I repeat what I said, and it is this: that counsel for the lord (the prisoner at the bar) may be present at the bar, in order to be heard to any matter or point of law (if any such shall arise) relating to the High Treason, and likewise to make that lord's full Defence on the Articles of Impeachment of High Crimes and Misdemeanors, as well in matters of fact, as matters of law.

Mr. Hampden. My lords, the Commons of Great Britain in parliament assembled, out of indispensable duty to their country, and zeal for the preservation of the common liberties of Europe, have brought to your lordships' bar Robert earl of Oxford and earl Mortimer, late high treasurer and a privy counsellor of this kingdom, charged with the highest Crimes and Misdemeanors, by him committed and done against the person, crown and dignity of his sovereign, the peace and interest of this kingdom, and in breach of the several trusts reposed in him.

The Commons in their Charge set forth, the many solemn treaties and alliances which had been entered into between the crown of England, and other princes and potentates of Europe, for their mutual safety, from the considerations of the common danger which then threatened all Christendom from the immoderate growth of the power of France.

They likewise take notice to your lordships of the prosperous and flourishing condition which the liberties of Europe were in when, under these treaties and alliances, it pleased Almighty God to bless the confederate arms under the command of their great and victorious general the duke of Marlborough, with such a series of successes, as far exceeded their own expectations, and by the wisdom and unanimity of their counsels, the glory of the confederate arms, and the reputation of Great Britain in particular, was raised to a higher pitch than in any former age.

That in this prosperous condition of affairs, the prisoner at the bar, with other evil-minded persons, enemies to the true interest of their country, as well as to the common liberties and welfare of Europe, did by many wicked arts and insinuations obtain access to her late majesty queen Anne, got into her councils and into places of the highest trust, to make way

for his and their pernicious enterprizes, formed a treacherous correspondence with the emissaries of France, and gave false and destructive counsels to her majesty.

The particular Articles exhibited by the Commons, to which proper evidence will be applied, contain a Charge,

That this great person at the bar, having no regard to the honour or safety of his sovereign or these kingdoms, wherewith he was entrusted, or to the many solemn engagements with the old and faithful allies of this nation, but being devoted to the interest and service of the common enemy, did, by private and secret negociations, in breach of all public faith, maliciously and wickedly cultivate and improve the demands of the enemies of his country, more to their advantage than they themselves could have ever hoped for.

That by clandestine and secret negociations with the enemies of England, he gave up the particular interest of his own country: that he assumed to himself regal power, and in a time of open war took upon himself to meet and treat with the enemy, without any authority or power from his sovereign, and did what in him lay to subvert the ancient and established constitution of this kingdom.

That he concealed the advice and pernicious influence whereby he had engaged his sovereign and prostituted her honour, which had been raised to the highest pitch of glory abroad, and been justly held in veneration with her allies; and the royal hand was, by the wicked arts of the prisoner at the bar, made the instrument to advance the interest of the common enemy.

That by deceitfully amusing the allies of the crown of Great Britain, and by private, separate and unjustifiable negociations, entered into, and carried on by the prisoner at the bar, a lasting reproach was brought upon this nation, and the public faith of many treaties, wherein England was engaged in the most sacred and solemn manner, was notoriously violated, and the faithful allies of the crown amused and deceived.

That the prisoner at the bar did in the most fatal manner impose upon and delude his sovereign, in accepting a pretended expedient from the enemy, which the enemy at the same time declared to be null and void. That the most unjustifiable and destructive measures were taken by him to dissolve the whole confederacy, without any regard to religion, liberty or the faith of treaties; and in consideration of his wicked advice great numbers of the confederate troops, who had on many occasions signalized themselves in the defence of the cause of Europe, were given up as a sacrifice to the fury and revenge of the enemy.

My lords, the Commons in their Charge set forth the particular measures concerted and taken by the prisoner at the bar, to complete the destruction of the common cause of Europe, and the Protestant Succession to the crown of these realms. And they charge,

That the prisoner now before your lordships did traitorously aid, assist, and adhere to the enemies of his queen and country, and advised and promoted the giving up to those enemies the important town and fortress of Tournay, together with Spain and the West Indies.

That he sacrificed the trade and commerce of Great Britain to its common enemy without the least shadow of advantage procured to these kingdoms, and betrayed the national faith and honour of the crown, employing against his imperial majesty (the great and faithful ally of this kingdom) the naval power of the crown, and the supplies granted by parliament, in direct violation of the Grand Alliance, and contrary to her majesty's repeated declarations from the throne, and her plain and full instructions to her plenipotentiaries at Utrecht.

That he took upon himself to exercise the most arbitrary and unwarrantable authority; assuming to himself the chief direction and influence in her late majesty's councils, and most wickedly prostituted the honour of the crown, and the dignity of parliaments, totally depriving her majesty of the wholesome and necessary advice of her parliament, and misrepresenting the most essential parts of the negociations of peace, to obtain the sanction of parliament to his wicked and pernicious proceedings, thereby fatally deceiving her majesty, her allies, her parliament, and her people, by several false speeches and declarations, concerted and advised by him, to be made by her majesty from the throne to her parliament on the subject of the said negociations of peace; and by such wicked and unexampled evil counsel, he did most ungratefully abuse the favour of his royal mistress, and by means of her authority misled her parliament into groundless and prejudicial resolutions; and thereby not only prevented the just advice of the parliament to her majesty in that critical juncture, but obtained the approbation of parliament to his mysterious and dangerous practices; and did not only deprive her majesty of the confidence and affection of her allies, but expose her majesty and her people to the contempt of the enemy.

That he has used his utmost endeavours to subvert the ancient constitution of parliaments, the great and only security of the prerogative of the crown, and of the rights, liberties and properties of the people, and most wickedly attempted to destroy the freedom and independency of this noble House, the great ornament and nearest support of the crown; disguising his mischievous intention under pretence of superior zeal for the prerogative of the crown; but by his false advice her majesty was deprived of the seasonable and wholesome counsels of her parliament, and the prerogative perverted to the dishonour of the crown, and the irreparable mischief to the constitution of parliaments.

My lords, the Commons have further charged the noble lord with corruptions, in illegally misapplying monies appropriated by parliament, and with preventing any parliamentary

enquiry into the same, to the reproach and scandal of parliaments, in breach of his trust, the highest abuse of the goodness of his sovereign, and the greatest injustice and oppression of her subjects; and that he defrauded her late majesty of the public money with which he was entrusted for the support of the honour and dignity of the crown.

That this great person did assume to himself the supreme direction in her late majesty's councils, and did introduce to her majesty for a pretended public minister, a traitor in disguise named in the Articles; and gave such traitor several considerable sums out of her majesty's treasure, in a fictitious and scandalous manner; such person being sent into this kingdom under false pretences, secretly to promote the interest of the Pretender, whereby the prisoner at the bar did ungratefully expose the person of her majesty, and notoriously encourage the adherents of the Pretender, to the apparent danger of the Protestant Succession to the imperial crown of these realms. And,

Lastly, That this great person at the bar did, by the most false and wicked counsels and practices, betray and give up as a sacrifice to the implacable resentments of their enraged and powerful enemy, a free and generous people, the faithful and useful allies of this kingdom, the brave Catalans: who, by the evil measures concerted and taken by the prisoner at the bar, were betrayed into irrecoverable slavery, and the honour of the British nation, always renowned for the love of liberty, and for giving protection to the distressed asserters of it, therein most basely prostituted by the pernicious and detestable counsel of the prisoner at the bar.

Thus your lordships have a view of the guilt in which the treasons and other crimes committed by the prisoner at the bar have involved him: and it is with astonishment the Commons observe, that his Defence is an attempt to asperse the memory of his royal mistress with the blame of what was transacted during his administration, which by imposing upon her he had effected against her honour, and the good of his country; thereby attempting to reflect upon the justice of the House of Commons, and to cast an odium upon their proceedings against him. But we doubt not your lordships' vindication of the honour of her late majesty, and the proceedings of the Commons in this prosecution.

The Commons think it their duty to express their utmost abhorrence of the traitorous and wicked proceedings of the prisoner at the bar, and to shew their resentment against him, as the author and promoter of them.

They have found him abusing and betraying the honour of his royal mistress, into whose favour he had insinuated himself, for the most destructive and wicked purposes. They have found him insidiously dividing and weakening us and our allies: Betraying our counsels; traitorously giving up our strong holds, fortresses and defences of Europe, and her most wealthy and flourishing countries to the common enemy in time of open war: And contriving and effecting the dissolution of the greatest and most noble confederacy that ever formed and united in defence of the Protestant interest, and the glorious liberties of Europe.

They have found him attempting to deprive these kingdoms of the only blessing left to their hopes, and which, by the providence of God only, they now enjoy, the most auspicious government of his present majesty, the greatest and best of princes, whose magnanimity, wisdom, piety, and other princely virtues, have filled the imperial throne of Great Britain with a lustre unknown in any former age. In this attempt, the noble lord at the bar wickedly endeavoured to defeat us of our happy prospect of lasting felicities, in a long succession of Protestant princes in the royal line of his most excellent majesty, the most illustrious prince and princess of Wales, and their issue, eminently endowed with all graces and accomplishments for making a generous and free people happy: On the continuance of which succession, next under God, all that is dear and valuable to us entirely depends.

My lords, the Commons justly resent and detest the reproach brought upon the faith and honour of their country, by the great evil minister at the bar: But they promise themselves your lordships will ever be a terror to all evil ministers, how great soever; and that your lordships can never fail to do justice to your injured country, upon all perfidious counsellors, who lie in wait to destroy our religion, laws and liberties.

Sir *J. Jekyll.* My lords, by the commands of the House of Commons, I appear to make good that part of the Charge against the noble lord at the bar, which is contained in the first Article.

Here the lord *Harcourt* moved to adjourn to the House of Lords.

L. H. Steward. Is it your lordships' pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. Steward. This House is adjourned to the Chamber of Parliament.

And being adjourned accordingly, the Lords and others returned in the same order they went down.

And the House being resumed, this question was moved and stated,

That the Commons be not admitted to proceed in order to make good the Articles against Robert earl of Oxford and earl Mortimer for High Crimes and Misdemeanors, till judgment be first given on the Articles for High-Treason:

And a debate ensuing thereupon, the previous question was put, whether that question shall be now put? It was resolved in the affirmative.

And the main question being accordingly put, viz.

That the Commons be not admitted to pro-

ceed, in order to make good the Articles against Robert earl of Oxford and earl Mortimer for High Crimes and Misdemeanors, till judgment be first given on the Articles for High Treason? It was resolved in the affirmative.

Ordered that the said Resolution be communicated to the Commons by the Lord High Steward.

A Message was sent to the House of Commons by Mr. Browning and Mr. Orlebar, two masters of the court of Chancery, to acquaint them, that the Lords are now about going down into Westminster-hall.

The messengers returned, and acquainted the House that they had delivered their message, and that the Commons were preparing to go immediately into Westminster-hall.

Then the House was again adjourned into Westminster-hall; and the Lords being there seated, and the House resumed, the Lord High Steward acquainted the Managers for the Commons, that their lordships had come to a Resolution, that the Commons be not admitted to proceed in order to make good the Articles against Robert earl of Oxford and earl Mortimer for High Crimes and Misdemeanors, till judgment be first given on the Articles for High Treason.

Sir *William Thomson*. My lords, the Managers for the Commons conceive it to be the undoubted right of the Commons to proceed in their own method in maintenance of the Articles exhibited by them; and do apprehend that this Resolution of your lordships may be of such fatal consequence to the rights and privileges of all the Commons of Great Britain, that they cannot take upon them to proceed any further, without resorting to the House of Commons for their direction herein.

L. H. Steward. Is it your lordships' pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the House adjourned to the Chamber of Parliament. And being resumed,

The earl of Oxford was ordered to be remanded to the Tower, and to be brought again to the bar in Westminster-hall to-morrow at eleven o'clock in the forenoon, in order to proceed further on the Trial of the said Earl.

June 25, 1717.

The House of Lords being met as usual in the Chamber of Parliament, it was there ordered, that a Message be sent to the House of Commons to acquaint them that the Lords have ordered Robert earl of Oxford and earl Mortimer to be brought to the bar of their House in Westminster-hall this day at 11 o'clock in the forenoon, in order to proceed further on the Trial of the said Earl.

And a Message was sent accordingly by Mr. Holford and Mr. Lovibond, two of the masters of the court of Chancery.

A Message was sent from the House of Commons by Mr. Carter and others, that the Commons having taken into their consideration their lordships' Resolution communicated to their Managers relating to the proceedings on the Trial of Robert earl of Oxford and earl Mortimer, and being desirous to preserve a good correspondence between the two Houses, have appointed a committee to search precedents upon a matter of this great importance, and desire that their lordships will not proceed at the time appointed.

Ordered, that the messengers of the House of Commons be called in and acquainted, that the Lords having taken the Message of the Commons into their consideration, their lordships will not proceed on the Trial of the earl of Oxford and earl Mortimer at the time appointed, but will proceed further on the said Trial on Thursday next at eleven o'clock in the forenoon.

Accordingly the messengers were called in and acquainted therewith.

Ordered, that the lieutenant of the Tower do take back the earl of Oxford and earl Mortimer to the Tower, and do bring the said Earl to the bar of this House in Westminster-hall on Thursday next at eleven o'clock in the forenoon, in order to proceed further on the Trial of the said Earl.

June 27, 1717.

The House of Lords being met as usual, a Message was sent from the House of Commons by the lord Morpeth and others, to desire a Conference with the House of Lords, in relation to proceedings in the prosecutions of Impeachments. To which the House agreed.

And the Commons were called in and told, that the Lords do agree to a Conference as is desired, and appoint it presently in the Painted Chamber.

Then several Lords were named managers of the Conference.

The House being informed, that the Commons were ready for the Conference, in the Painted Chamber;

The House was adjourned during pleasure, and the lords named as managers went to the Conference: Which being ended,

The House was resumed.

And the Lord Privy Seal reported, that they had been at the Conference, and met Mr. Carter and other managers, for the Commons, who delivered to their lordships a Paper as follows:

"The Commons having taken into their consideration your lordships' resolution, communicated to their managers, relating to the proceedings on the Trial of Robert earl of Oxford and earl Mortimer, and being desirous as far as in them lies to maintain a good correspondence with your lordships; have desired this Conference, and have commanded us to acquaint your lordships, that they conceive it to be the undoubted right of the Commons to impeach a peer, either for High Treason or for High Crimes and Misdemeanors, or, if they see occasion, to mix both the one and the other in the same accusation.

enquiry into the same, to the reproach and scandal of parliaments, in breach of his trust, the highest abuse of the goodness of his sovereign, and the greatest injustice and oppression of her subjects; and that he defrauded her late majesty of the public money with which he was entrusted for the support of the honour and dignity of the crown.

That this great person did assume to himself the supreme direction in her late majesty's councils, and did introduce to her majesty for a pretended public minister, a traitor in disguise named in the Articles; and gave such traitor several considerable sums out of her majesty's treasure, in a fictitious and scandalous manner; such person being sent into this kingdom under false pretences, secretly to promote the interest of the Pretender, whereby the prisoner at the bar did ungratefully expose the person of her majesty, and notoriously encourage the adherents of the Pretender, to the apparent danger of the Protestant Succession to the imperial crown of these realms. And,

Lastly, That this great person at the bar did, by the most false and wicked counsels and practices, betray and give up as a sacrifice to the implacable resentments of their enraged and powerful enemy, a free and generous people, the faithful and useful allies of this kingdom, the brave Catalans: who, by the evil measures concerted and taken by the prisoner at the bar, were betrayed into irrecoverable slavery, and the honour of the British nation, always renowned for the love of liberty, and for giving protection to the distressed asserters of it, therein most basely prostituted by the pernicious and detestable counsel of the prisoner at the bar.

Thus your lordships have a view of the guilt in which the treasons and other crimes committed by the prisoner at the bar have involved him: and it is with astonishment the Commons observe, that his Defence is an attempt to asperse the memory of his royal mistress with the blame of what was transacted during his administration, which by imposing upon her he had effected against her honour, and the good of his country; thereby attempting to reflect upon the justice of the House of Commons, and to cast an odium upon their proceedings against him. But we doubt not your lordships' vindication of the honour of her late majesty, and the proceedings of the Commons in this prosecution.

The Commons think it their duty to express their utmost abhorrence of the traitorous and wicked proceedings of the prisoner at the bar, and to shew their resentment against him, as the author and promoter of them.

They have found him abusing and betraying the honour of his royal mistress, into whose favour he had insinuated himself, for the most destructive and wicked purposes. They have found him insidiously dividing and weakening us and our allies: Betraying our counsels; traitorously giving up our strong holds, fortresses and defences of Europe, and her most wealthy and flourishing countries to the common enemy in time of open war: And contriving and effecting the dissolution of the greatest and most noble confederacy that ever formed and united in defence of the Protestant interest, and the glorious liberties of Europe.

They have found him attempting to deprive these kingdoms of the only blessing left to their hopes, and which, by the providence of God only, they now enjoy, the most auspicious government of his present majesty, the greatest and best of princes, whose magnanimity, wisdom, piety, and other princely virtues, have filled the imperial throne of Great Britain with a lustre unknown in any former age. In this attempt, the noble lord at the bar wickedly endeavoured to defeat us of our happy prospect of lasting felicities, in a long succession of Protestant princes in the royal line of his most excellent majesty, the most illustrious prince and princess of Wales, and their issue, eminently endowed with all graces and accomplishments for making a generous and free people happy: On the continuance of which succession, next under God, all that is dear and valuable to us entirely depends.

My lords, the Commons justly resent and detest the reproach brought upon the faith and honour of their country, by the great evil minister at the bar: But they promise themselves your lordships will ever be a terror to all evil ministers, how great soever; and that your lordships can never fail to do justice to your injured country, upon all perfidious counsellors, who lie in wait to destroy our religion, laws and liberties.

Sir *J. Jekyll.* My lords, by the commands of the House of Commons, I appear to make good that part of the Charge against the noble lord at the bar, which is contained in the first Article.

Here the lord *Harcourt* moved to adjourn to the House of Lords.

L. H. Steward. Is it your lordships' pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. H. Steward. This House is adjourned to the Chamber of Parliament.

And being adjourned accordingly, the Lords and others returned in the same order they went down.

And the House being resumed, this question was moved and stated,

That the Commons be not admitted to proceed in order to make good the Articles against Robert earl of Oxford and earl Mortimer for High Crimes and Misdemeanors, till judgment be first given on the Articles for High-Treason:

And a debate ensuing thereupon, the previous question was put, whether that question shall be now put? It was resolved in the affirmative.

And the main question being accordingly put, viz.

That the Commons be not admitted to pro-

ceed, in order to make good the Articles against Robert earl of Oxford and earl Mortimer for High Crimes and Misdemeanors, till judgment be first given on the Articles for High Treason? It was resolved in the affirmative.

Ordered that the said Resolution be communicated to the Commons by the Lord High Steward.

A Message was sent to the House of Commons by Mr. Browning and Mr. Orlebar, two masters of the court of Chancery, to acquaint them, that the Lords are now about going down into Westminster-hall.

The messengers returned, and acquainted the House that they had delivered their message, and that the Commons were preparing to go immediately into Westminster-hall.

Then the House was again adjourned into Westminster-hall; and the Lords being there seated, and the House resumed, the Lord High Steward acquainted the Managers for the Commons, that their lordships had come to a Resolution, that the Commons be not admitted to proceed in order to make good the Articles against Robert earl of Oxford and earl Mortimer for High Crimes and Misdemeanors, till judgment be first given on the Articles for High Treason.

Sir *William Thomson.* My lords, the Managers for the Commons conceive it to be the undoubted right of the Commons to proceed in their own method in maintenance of the Articles exhibited by them; and do apprehend that this Resolution of your lordships may be of such fatal consequence to the rights and privileges of all the Commons of Great Britain, that they cannot take upon them to proceed any further, without resorting to the House of Commons for their direction herein.

L. H. Steward. Is it your lordships' pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

Then the House adjourned to the Chamber of Parliament. And being resumed,

The earl of Oxford was ordered to be remanded to the Tower, and to be brought again to the bar in Westminster-hall to-morrow at eleven o'clock in the forenoon, in order to proceed further on the Trial of the said Earl.

June 25, 1717.

The House of Lords being met as usual in the Chamber of Parliament, it was there ordered, that a Message be sent to the House of Commons to acquaint them that the Lords have ordered Robert earl of Oxford and earl Mortimer to be brought to the bar of their House in Westminster-hall this day at 11 o'clock in the forenoon, in order to proceed further on the Trial of the said Earl.

And a Message was sent accordingly by Mr. Holford and Mr. Lovibond, two of the masters of the court of Chancery.

A Message was sent from the House of Commons by Mr. Carter and others, that the Commons having taken into their consideration their lordships' Resolution communicated to their Managers relating to the proceedings on the Trial of Robert earl of Oxford and earl Mortimer, and being desirous to preserve a good correspondence between the two Houses, have appointed a committee to search precedents upon a matter of this great importance, and desire that their lordships will not proceed at the time appointed.

Ordered, that the messengers of the House of Commons be called in and acquainted, that the Lords having taken the Message of the Commons into their consideration, their lordships will not proceed on the Trial of the earl of Oxford and earl Mortimer at the time appointed, but will proceed further on the said Trial on Thursday next at eleven o'clock in the forenoon.

Accordingly the messengers were called in and acquainted therewith.

Ordered, that the lieutenant of the Tower do take back the earl of Oxford and earl Mortimer to the Tower, and do bring the said Earl to the bar of this House in Westminster-hall on Thursday next at eleven o'clock in the forenoon, in order to proceed further on the Trial of the said Earl.

June 27, 1717.

The House of Lords being met as usual, a Message was sent from the House of Commons by the lord Morpeth and others, to desire a Conference with the House of Lords, in relation to proceedings in the prosecutions of Impeachments. To which the House agreed.

And the Commons were called in and told, that the Lords do agree to a Conference as is desired, and appoint it presently in the Painted Chamber.

Then several Lords were named managers of the Conference.

The House being informed, that the Commons were ready for the Conference, in the Painted Chamber;

The House was adjourned during pleasure, and the lords named as managers went to the Conference: Which being ended,

The House was resumed.

And the Lord Privy Seal reported, that they had been at the Conference, and met Mr. Carter and other managers, for the Commons, who delivered to their lordships a Paper as follows:

"The Commons having taken into their consideration your lordships' resolution, communicated to their managers, relating to the proceedings on the Trial of Robert earl of Oxford and earl Mortimer, and being desirous as far as in them lies to maintain a good correspondence with your lordships; have desired this Conference, and have commanded us to acquaint your lordships, that they conceive it to be the undoubted right of the Commons to impeach a peer, either for High Treason or for High Crimes and Misdemeanors, or, if they see occasion, to mix both the one and the other in the same accusation.

"The Impeachment preferred against Robert earl of Oxford and earl Mortimer, is one continued accusation, consisting of High Crimes and Misdemeanors, and also of charges of High Treason. The facts on which the Articles preceding those of High Treason are grounded are laid together in order of time, and follow one another successively, in the manner they were committed.

"As the Commons thought this the most natural method for exhibiting the several Articles against the said Earl, they were all of opinion that they should proceed in the proof of these several facts after the same method; since it is manifest, that in laying open the course of such a wicked administration, the preceding parts of it give light to those which follow; and that the proof of several Articles of the High Crimes and Misdemeanors would naturally lead to the proof of those of High Treason.

"Your lordships received these several Articles of Impeachment without making any exception against the form in which they were exhibited. The said Earl made his Answer to them in the same order, and has no where insisted to be tried in any other method; so that the Commons are surprized to find a stop put to their prosecution, by an objection which has never been started by the said Earl, and which your lordships had given them so little reason to expect.

"To this must be added, that as the Commons only are masters of the evidence, and as upon that account they are best able to determine in what method to proceed for the advantage of the prosecution, in the event of which all the Commons of Great Britain are so highly concerned.

"To which they further add, that they see no reason but that your lordships may as well invert the whole order of the Articles, as prescribe to the Commons those particular Articles on which they are first to proceed; which will necessarily produce such a confusion, both in the facts and evidence, as is by no means consistent with that clearness and perspicuity in which the Commons think this affair ought to appear.

"The Commons, upon examining precedents, do find divers precedents of Impeachments for High Treason and other High Crimes and Misdemeanors, in the same accusation; and do not find that the Lords ever objected to such proceeding, or ever gave judgment upon any particular Article of an Impeachment before the Commons had gone through and concluded their evidence upon all the Articles, or so many of them as they thought fit; and the Commons are at a loss to conceive what arguments or precedents can be brought to support the Resolution of your lordships, to give judgment upon one part of the same accusation, reserving the other part for a subsequent trial; as they are to know what your lordships mean by admitting the Commons to proceed upon the Articles for High Crimes and Misdemeanors, after the judgment is given upon the Articles for High Treason, supposing the judgment proper for High Treason should be given against the said Earl.

"For these reasons the Commons assert it as their undoubted right to proceed on the Trial of Robert earl of Oxford and earl Mortimer, after the method in which their Managers were proceeding, when interrupted by your lordships' Resolution."

The Reasons delivered by the Commons at the Conference were read by the clerk.

And after debate, and reading the Resolution of this House communicated to the Commons on Monday last, viz.

That the Commons be not admitted to proceed in order to make good the Articles against Robert earl of Oxford and earl Mortimer, for High Crimes and Misdemeanors, till judgment be first given on the Articles for High Treason:

The question was put, Whether to insist on the said Resolution? It was resolved in the affirmative.

Then it being proposed that a committee be appointed to prepare what is to be offered to the Commons at a Conference in communicating to them the Resolution for insisting:

And a question being stated thereupon, It was moved to add these words to the said question, viz. "And also to prepare such reasons as shall be thought proper to be then used in maintenance thereof."

And after debate, the question was put, Whether those words shall be added to the said question? It was resolved in the affirmative.

Resolved upon the question, and ordered, that a Committee be appointed to prepare what is to be offered to the Commons at a Conference in communicating to them the Resolution of this House for insisting on their lordships' Resolution above-mentioned, and also to prepare such reasons as shall be thought proper to be then used in maintenance thereof.

Ordered, That all the lords present be the said Committee.

Then it being proposed, that the Committee meet immediately. And the same being objected to; the question was put, Whether the Committee shall withdraw and sit immediately? It was resolved in the negative.

Ordered, That the said Committee, or any seven of them, meet to-morrow at ten o'clock in the forenoon in the prince's lodgings near the House of Peers, and to adjourn as they please.

Ordered, That the lieutenant of the Tower do take back the earl of Oxford and earl Mortimer, and bring the said Earl to the bar of this House in Westminster-hall, on Saturday next at eleven o'clock, in order to proceed further on the Trial of the said Earl.

June 28, 1717.

The Lords being assembled in their House as usual, a Message was sent to the House of Commons by Mr. Fellows and Mr. Meller,

two of the masters of the court of Chancery, to acquaint them that the Lords do desire they will continue sitting for some time.

The lord Trevor reported from the Committee appointed to prepare what is to be offered to the Commons at a Conference in communicating to them the Resolution of this House, for insisting on their lordships' Resolution communicated to the Commons on Monday last, and also to prepare such Reasons as shall be thought proper to be then used in maintenance thereof, that the Committee have prepared Reasons accordingly, as follow, viz.

"Their lordships, in order to preserve a good correspondence with the House of Commons (which they shall always endeavour to do as far as lies in their power) have desired this Conference upon the subject-matter of the last Conference, and have directed us to acquaint you, that their lordships judge it a right inherent in every court of justice, to order and direct such methods of proceedings as such courts shall think fit to be observed in all causes depending before them, which can have no influence to the prejudice of justice; and where such methods of proceedings are not otherwise settled by any positive rule. The power of judicature on all impeachments being a right unquestionably inherent in their lordships, and it not being determined by any positive rule, whether the House of Commons may proceed to make good the several Articles exhibited for Misdemeanors, in such order as they shall think fit, before they proceed to make good the Articles exhibited for High-Treason: and there being no precedent where the Commons, upon trial of any such impeachments, attempted to proceed in the first place to make good any of the Articles contained in such Impeachment for High Crimes and Misdemeanors; their lordships considering the nature of the Impeachment now depending before them, and the method wherein the Managers for the House of Commons were beginning to proceed upon the trial to make good the first Article thereof, which is a Charge for High Crimes and Misdemeanors only; and also considering the very different methods of proceedings on an impeachment of a peer for High-Treason, as well before, as upon the trial thereof, and the circumstances attending such a trial, from the proceedings on the impeachment of a peer for High Crimes and Misdemeanors, and the known circumstances attending such a trial, thought themselves obliged to come to the Resolution communicated to the Commons on the 24th instant, as well for the doing justice in the case depending before them, as for the preventing a new precedent to be made on this trial, in consequence whereof a new and unjustifiable form of proceeding against a peer upon an impeachment for High-Treason and High Crimes, might be introduced at his trial upon those Articles in which he is charged for High Crimes and Misdemeanors only, to the prejudice of the peerage of Great Britain in all time to come, viz. the trying a peer on Articles for High Crimes and Misdemeanors without the bar, the detaining in custody a peer so accused, and repeated commitments of him to the Tower during the time of such trial, and subjecting a peer to as ignominious circumstances on his trial, on Articles for Misdemeanors, as if he were then on his trial, on Articles for High Treason: whereas a peer on his trial on Articles for Misdemeanors only, ought not to be deprived of his liberty, nor sequestered from parliament, and is entitled to the privilege of sitting within the bar during the whole time of his trial: in all which particulars the known rule of proceedings in such cases may be evaded, should a peer be brought to his trial on several Articles exhibited against him on High Crimes and Misdemeanors and for High-Treason mixed together, and the Commons be admitted to proceed in order to make good the Articles for High Crimes and Misdemeanors before judgment be given upon the Articles for High Treason. Their lordships have fully considered the matters offered to them by the House of Commons at the last Conference relating to the proceedings against Robert earl of Oxford and earl Mortimer; and their lordships are fully satisfied, that the Resolution they have taken and communicated to the Commons on the 24th instant is just and reasonable; and that the House of Commons are not put under any real inconvenience thereby in carrying on their present prosecution. Their lordships have commanded us to let you know that they do insist on their said Resolution, viz. That the Commons be not admitted to proceed in order to make good the Articles against Robert earl of Oxford and earl Mortimer, for High Crimes and Misdemeanors, until judgment be first given upon the Articles for High Treason."

Which Report being read by the clerk, was agreed to by the House.

Then a Message was sent to the House of Commons by Mr. Fellows and Mr. Meller, to acquaint them, that the Lords do desire a present Conference in the Painted Chamber, upon the subject-matter of the last Conference.

Ordered, that the managers of the last Conference be the managers of this Conference.

The messengers sent to the House of Commons, return answer that the Commons will give a present Conference as desired.

The House being informed, that the Commons were ready in the Painted Chamber for the Conference, the names of the managers were read: And,

The House was adjourned during pleasure, and the lords named as managers went to the Conference; which being ended, the House was resumed: And

The Lord Chamberlain reported, that the managers had been at the conference, and delivered to the Commons what they were directed.

A Message was sent to the House of Commons by Mr. Fellows and Mr. Meller, to acquaint them, that the Lords have ordered the

earl of Oxford to be brought to the bar of this House in Westminster-hall to-morrow at eleven o'clock in the forenoon, in order to proceed further on the Trial of the said Earl.

A message was brought from the House of Commons by Mr. Yonge and others, to desire that this House will continue sitting for some time; to which the House agreed.

And the Commons were called in and told, that the Lords will continue sitting for some time, as is desired.

Ordered, That the lieutenant of the Tower do bring the earl of Oxford to the bar of this House in Westminster-hall, on Monday next at eleven o'clock, in order to proceed further on the Trial of the said Earl.

June 29, 1717.

The House of Lords being assembled as usual in the Chamber of Parliament, a message was brought from the House of Commons by Mr. Pelham and others, to desire a free Conference with this House upon the subject-matter of the last Conference.

Ordered, That this House will send an Answer by messengers of their own. And

The messengers were called in, and acquainted therewith.

The House proceeded to take the said message into consideration. And after debate, and reading out of the Journal the proceedings at the several Conferences in the Case of the lord viscount Mordaunt, upon his Impeachment in the year 1666;

The question was put, whether to give a free Conference with the House of Commons, as is desired, upon the subject-matter of the last Conference?

It was resolved in the negative.

Ordered, That a Message be sent to the House of Commons, to acquaint them, that the subject-matter of the last Conference concerning a point of judicature determined by this House after the Trial began, their lordships do not think fit to give a free Conference on the subject-matter of the last Conference, as is desired by the House of Commons.

And also, that another Message be sent to the House of Commons to acquaint them, that their lordships have ordered Robert earl of Oxford and earl Mortimer to be brought to the bar of this House in Westminster-hall, on Monday next at eleven o'clock in the forenoon, in order to proceed further on the Trial of the said Earl; and Mr. Holford and Mr. Dormer, two of the masters of the court of Chancery, were sent accordingly with the said Messages.

July 1, 1717.

The Lords being assembled in their House as usual, and this day being appointed to proceed further on the Trial of Robert earl of Oxford and earl Mortimer in Westminster-hall, the House (according to order) was called over by the clerk; and the names of the absent lords being set down (pursuant to the same order) they were again called over, and excused.

A Message was brought from the House of Commons by Mr. Gibbon and others, to desire their lordships to defer going down into Westminster-hall for some time.

Ordered, That the messengers of the House of Commons be called in and told, that the Lords have considered their Message, and that their lordships will defer going down into Westminster-hall for some time, as is desired.

And the messengers were called and acquainted accordingly.

A Message was brought from the House of Commons by Mr. Craggs and others, to desire a Conference with this House upon the subject-matter of their lordships' Message relating to the free Conference desired by the Commons.—To which the House agreed.

And the messengers of the House of Commons were called in and told, that the Lords do agree to a Conference as desired, and appoint it presently in the Painted Chamber.

Ordered, That the managers of the last Conference be the managers of this Conference.

The House being informed, that the Commons were ready in the Painted Chamber,

The managers' names were read, and the House was adjourned during pleasure, and the lords named as managers went to the Conference; which being ended, the House was resumed, and the lord privy-seal reported the effect of the Conference, which was, that the managers for the Commons had delivered to their lordships a Paper, containing as follows, viz.

"The Commons having taken into consideration your lordships' message, viz.

"That your lordships did not think fit to give a free Conference on the subject-matter of the last Conference, as was desired by the Commons, and they being still desirous, to the utmost of their power, to preserve a good correspondence with your lordships, have asked this Conference; and have commanded us to acquaint your lordships, that they are very much surprized to find your lordships deny a free Conference, after your lordships had already agreed to a Conference desired by the Commons on the said subject-matter, and after your lordships have on your parts also desired a Conference upon the same subject.

"That free Conferences are the most ancient and established methods for adjusting the differences that have at any time arisen between the two Houses, and, as the Commons conceive, is the only method to preserve a good correspondence between them on such occasions, which at this time is of the highest importance, because a misunderstanding on this account would tend to defeat the Trial of the Impeachment of the Commons.

"That the Commons conceive clearly, that the subject-matter of the last Conference is not a point of judicature, but a point relating only to the prosecution of the Commons, it having arisen before any matter of judgment had come before your lordships upon the Trial.

"For which reasons the Commons conceive, that your lordships ought not to have denied them a free Conference upon the subject-matter of the last Conference."

Which being read by the clerk;

A Message was sent to the House of Commons by Mr. Orlebar and Mr. Browning, two of the masters of Chancery, to desire they would continue sitting for some time.

Then the House proceeded to take into consideration the matter delivered by the Commons at the last Conference.

And it being proposed to insist on denying a free Conference with the Commons; and debate thereupon; the question was put, whether to insist on denying a free Conference upon the subject-matter concerning which a free Conference was desired by the Commons? It was resolved in the affirmative.

Ordered, That a present Conference be desired with the Commons in the Painted Chamber on the subject-matter of the last Conference, and that the Commons be there acquainted, that the Lords having taken into consideration the subject-matter of the last Conference, their lordships do insist on denying a free Conference upon the subject-matter concerning which a free Conference was desired by the House of Commons.

Accordingly a Message was sent to the House of Commons by Mr. Orlebar and Mr. Browning, to desire a present Conference in the Painted Chamber on the subject-matter of the last Conference.

The messengers returned, and acquainted the House, that the Commons do agree to a Conference, as desired.

Ordered, that the managers of the last Conference be the managers of this Conference.

Then the House being informed, that the Commons were ready in the Painted Chamber, the managers' names were read. And

The House was adjourned during pleasure, and the Lords appointed managers went to the Conference; which being ended, the House was resumed, and the Lord Privy-Seal reported, that they had been at the Conference, and acquainted the Commons as above directed.

A Message was sent to the House of Commons by the former messengers, to desire they will continue sitting for some time.

The messengers being returned, acquainted the House, that the Commons will continue sitting for some time, as desired.

Then it being moved, that a Message be sent to the House of Commons, that this House intends presently to proceed further on the Trial of the earl of Oxford in Westminster-hall.

And it being also moved, that the House do now adjourn during pleasure, the question was put, Whether now to adjourn during pleasure? It was resolved in the affirmative.

The House was accordingly adjourned during pleasure.

The House was resumed.

A Message was sent to the House of Commons by Mr. Orlebar and Mr. Browning, to acquaint them, that this House intends presently to proceed further on the Trial of Robert earl of Oxford and earl Mortimer in Westminster-hall.

Then it being proposed provisionally to consider the form of a proclamation proper to be made in Westminster-hall for the appearance of the prosecutors, if they should not be there present to proceed, in order to make good their Impeachment against the said earl of Oxford and earl Mortimer; and thereupon the proclamation made the 17th of June, 1701, at the Trial of the lord Somers, being read; It was agreed by the House, that when the Lords are gone down into Westminster-hall, immediately after the Lords' House shall be resumed in Westminster-hall, and proclamation for silence made, and proclamation for bringing the prisoner to the bar, if the Managers of the House of Commons shall not be there, proclamation be likewise made in these words, viz.

"Whereas Robert earl of Oxford and earl Mortimer stands impeached of High-Treason, and other High Crimes and Misdemeanors, by the House of Commons, in the names of themselves and of all the Commons of Great Britain, all persons concerned are to take notice, that he now stands on his Trial, and they may now come forth in order to make good their said Charge."

Then the House was adjourned into Westminster-hall, and the Lords being come down into Westminster-hall, and seated in the usual manner about five in the evening;*

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* A substantial Trial of the Impeachments against the earl of Portland, lord Sommers, the earl of Orford, and lord Halifax, (see their Case, vol. 14, p. 233), was, as in this Case of lord Oxford, prevented by means of disputes between the two Houses respecting the forms of proceeding. In the former Case, the Commons pressed much that a Committee of both Houses should be nominated to consider of the most proper ways and methods of proceeding on impeachments according to the usage of Parliament, but the Lords pertinaciously refused to grant such a Committee: and the first reason declared by the Commons, why they peremptorily refused to proceed to the trial of the lord Sommers, on the day appointed by the Lords, was, "Because your lordships have not yet agreed, that a Committee of both Houses should be appointed for settling the necessary preliminaries; a method never, until this time, denied by the House of Lords, whensoever the Commons have thought it necessary to desire the same." See vol. 14, p. 307.

For a Tory's prediction, that lord Oxford never would be tried, and the grounds which he alleged for his prediction, see Erasmus Lewis's Letter of June 15, 1717, to Swift. Nichols's edition, 12mo. 1803, of Swift's Works, vol. 16, p. 166. See, also, New Parl. Hist. vol. 7, p. 475.

L. H. Steward. My lords, the House is resumed——Make proclamation for silence.

Serj. at Arms. O Yes, &c. (as before.)

L. H. Steward. Make proclamation for the lieutenant of the Tower of London to bring the prisoner to the bar.

Serj. at Arms. O Yes, &c. Lieutenant of the Tower of London, bring forth your prisoner to the bar, according to the order of the House of Lords to you directed.

The earl of Oxford and earl Mortimer being brought to the bar accordingly, and the Commons not being present;

L. H. Steward. Make proclamation according to the order of the House of Lords.

Then the Serjeant at Arms made the following proclamation according to the said order of the House of Lords, the clerk of the House of Lords reading it to him as followeth:

Serj. at Arms. Whereas Robert earl of Oxford and earl Mortimer stands impeached of High Treason, and other High Crimes and Misdemeanors, by the House of Commons, in the name of themselves and all the Commons of Great Britain, all persons concerned are to take notice, that he now stands upon his Trial, and they may now come forth in order to make good their said Charge.

After about 20 minutes silence, the lord Guilford moved for an adjournment to the House above.

L. H. Steward. Do your lordships hear what is moved? Is that your lordships' pleasure?

Lords. Ay, ay.

L. H. Steward. This House is adjourned to the Chamber of Parliament.

And being returned in the same order they went down,

The House was resumed.

Then it was proposed, That Robert earl of Oxford and earl Mortimer be acquitted of the Articles of Impeachment exhibited against him by the House of Commons for High Treason, and other High Crimes and Misdemeanors, and of all things therein contained, and that the said Impeachment be dismissed.

And a question being stated thereupon, it was moved to leave out these words (viz. and other High Crimes and Misdemeanors;) and thereupon the question being put,

Whether those words shall stand part of the question?

It was resolved in the affirmative.

Then the last question being again stated,

Ordered, That the question now stated be the question to be put in Westminster-hall.

Then the Lord High-Steward desiring that further directions might be given concerning the further proceedings in the Trial of the said Earl in Westminster-hall, it was agreed by the House, and ordered, that in Westminster-hall the Lord High-Steward shall read the question as already stated; and then call to the lowest baron first, and to every other lord then present, and ask him his opinion, whether Content or Not Content; and that every lord shall stand up when called to, and give his vote, Content or Not Content; and that the Lord High-Steward having taken the votes, shall declare the majority; and if the majority answer in the affirmative, the Lord High-Steward is to declare the same, and particularly to the earl of Oxford, as soon as he shall be brought to the bar, and shall immediately pronounce the judgment of this House in the form following, (viz.) "It is considered, ordered and adjudged by the Lords spiritual and temporal in parliament assembled, that Robert earl of Oxford and earl Mortimer shall be, and is hereby acquitted of the Articles of Impeachment exhibited against him by the House of Commons for High-Treason, and other High Crimes and Misdemeanors, and of all things therein contained; and that the said Impeachment shall be, and is hereby dismissed." And shall immediately direct the lieutenant of the Tower then to discharge his prisoner.—And after that to dissolve the commission.

The House was then again adjourned into Westminster-hall, and being there resumed;

L. H. Steward. Make proclamation for silence.

Serj. at Arms. O Yes, &c. (as before.)

O Yes, &c. Lieutenant of the Tower of London, bring forth your prisoner to the bar.

L. H. Steward. My lords, the clerk acquaints me, that for want of light in the passage he could not take an exact list of your lordships; I therefore desire that he may now take a list of the lords present.

Then the clerk took a list of the lords present.

L. H. Steward. If your lordships think fit, your lordships' names shall now be called over.

Lords. Ay, ay.

Then their names were called over.

Lords. The earl of Oxford is not yet gone from the bar.

Then the Earl was ordered to withdraw from the bar. And being withdrawn,

L. H. Steward. My lords, I shall now state the question, upon which your lordships are to give your votes; it is this, That Robert earl of Oxford and earl Mortimer be acquitted of the Articles of Impeachment exhibited against him by the House of Commons for High-Treason, and other High Crimes and Misdemeanors, and of all things therein contained, and that the said Impeachment be dismissed.

L. H. Steward. The clerk should attend near the Lords with candles, as they give their votes.

Then the Lord High-Steward put the question to their lordships, beginning at the youngest baron, in manner following.

L. H. Steward. My lord, your lordship has heard the question stated, what says your lordship, is your lordship Content, or Not Content?

The names of the Lords present, who were all Content, are as follow :

BARONS.
Newburgh
Parker
Cobham
Carleton
Bingley
Bathurst
Foley
Masham
Lansdowne
Trevor
Middleton
Mansel
Montjoy
Hay
Boyle
Harcourt
Belhaven
Gower
Haversham
Herbert
Ashburnham
Guilford
Stawell
Carteret
Lumley
Osborne
Cornwallis
Berkeley of Stratton
Leigh
Bruce
Teynham
Compton
St. John
Hundsdon
North and Grey
Willoughby of Brooke
Fitzwalter
Delawar
Willoughby of Eresby
Abergavenny.

BISHOPS.*
St. Asaph, (Wynne)
Chester, (Gastrell)
Bristol, (Smallridge)
Rochester, (Atterbury)
St. David's, (Ottley)
Hereford, (Bisse)
Landaff, (Tyler)
Bath & Wells, (Hooper)
Carlisle, (Nicholson)
Litchfield and Coventry, (Chandler)
Winchester, (Trelawney)
London, (Robinson.)

VISCOUNTS.
Castleton
Tadcaster
Lonsdale
Longueville
Townshend
Say and Sele
Hereford.

EARLS.
Halifax
Bristol
Carnarvon
Uxbridge
Dartmouth
Stafford
Ferrars
Ilay
Delorain
Orkney
Loudoun
Buchan
Cholmondeley
Poulet
Greenwich
Rochford
Plymouth
Abingdon
Rochester
Litchfield
Burlington
Carlisle
Anglesea
Cardigan
Clarendon
Scarsdale
Manchester
Northampton
Salisbury
Dorset
Pembroke
Derby.

DUKES.
Portland
Ancaster
Rutland
Buckingham
Devonshire
Shrewsbury
St. Alban's
Grafton
Somerset
Cleveland and Southampton
Kent
Kingston.

ARCHBISHOPS.
York, (Sir W. Dawes)
Canterbury, (Wake.)

L. H. Steward. My lords upon the question stated, I am Content.

L. H. Steward. My lords, Robert earl of Oxford and earl Mortimer is acquitted of the High Treason and other High Crimes and Misdemeanors wherewith he stands charged, by the unanimous vote of all your lordships here present.

L. H. Steward. Call the Earl to the bar.

Serj. at Arms. O Yes, &c. Lieutenant of the Tower of London, bring the earl of Oxford and earl Mortimer to the bar of this House.

L. H. Steward. Robert earl of Oxford and earl Mortimer, I am to acquaint your lordship, that your lordship is acquitted of the Articles of Impeachment exhibited against you for High Treason, and other High Crimes and Misdemeanors, by the House of Commons, and all things therein contained; and thereupon I am to pronounce this judgment, which I pronounce accordingly: It is considered, ordered and adjudged by the Lords spiritual and temporal in parliament assembled, that Robert earl of Oxford and earl Mortimer shall be, and is hereby acquitted of the Articles of Impeachment exhibited against him by the House of Commons for High Treason and other High Crimes and Misdemeanors, and of all things therein contained, and that the said Impeachment shall be and is hereby dismissed.

L. H. Steward. Lieutenant of the Tower of London, you are now to discharge your prisoner.

L. H. Steward. My lords, this is all that remains to be done by virtue of his majesty's commission; I do therefore declare the same to be dissolved.

Then the Lord High Steward broke his staff.

L. Chancellor. Is it your lordships' pleasure to adjourn to the Chamber of Parliament?

Lords. Ay, ay.

L. Chancellor. This House is adjourned to the Chamber of Parliament.

The Earl was immediately discharged at the bar, and paying his respects to the Lords, and having received the compliments of his friends, went away directly to his own house.

But the House of Commons resented this proceeding so far, as to address the king, that the earl of Oxford might be excepted out of the then intended Act of Grace; which was done accordingly.

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* The name of lord Crew, bishop of Durham, does not appear here, yet it is said in the "Examination of the Life and Character of Nathaniel lord Crew:"

"Lord Oxford sent to my lord, to beg his attendance in the House, says my lord, 'tell 'him from me I know the court as well as he, 'and longer, and that he does not use me like 'a gentleman.'

"My lord attended lord Oxford's Impeachment, and sat up for him all night, even to the hazard of his life."

In the Biographia Britannica, article Churchill, (edit. of 1784), is the following passage:

"After the accession of king George the First, when the earl of Oxford was impeached and committed to the Tower, and preparations were made for his trial, it is well known that a stop was suddenly put to it, to the great disappointment of a large part of the nation. There is a traditional story, relative to this event, in which the duke of Marlborough is concerned. It is said, that, at that time, Mr. Auditor Harley waited upon the duchess of Marlborough, and shewed her a letter, formerly written by the Duke, which proved his correspondence with the Pretender. Mr. Harley, after having read the letter, threatened that it should be produced at his brother the earl of Oxford's Trial, unless the proceedings against him were stopped. The Duchess watching her opportunity, seized the letter out of Mr. Harley's hand, threw it instantly into the fire, and then defied his malice. Upon this, he replied, 'Madam, I knew your grace too well to trust you. The letter you have burnt is only a copy; the original is safe in my own possession.' A similar anecdote, the authority for which we are able to assign, has been communicated to us by a worthy friend [Timothy Hollis, esq. of Great Ormond-street]. Before the earl of Oxford's intended Trial, he sent his son, lord Harley, together with serjeant Comyns, (afterwards Chief Baron of the Exchequer) to the duke of Marlborough, requesting his Grace's attendance at the Trial. The Duke, in some concern, enquired what the Earl wanted with him. Mr. Serjeant Comyns replied, that it was only to ask his Grace a question or two. The Duke walked about the room for about a quarter of an hour, without giving any answer, and seemed greatly disturbed; after which he asked, for what purpose his attendance was required? Lord Harley told him, it was only as to his hand. 'What,' says his Grace, 'has your father any letters of mine?' 'Yes,' replied lord Harley, 'all the letters your Grace ever wrote to him since the Revolution.' Upon this, the Duke continued to walk about the room in the greatest uneasiness, and even flung his wig off in his passion. Mr. Serjeant Comyns interrogating him what answer they should return to the unfortunate Lord, he said, 'I will certainly be there.' This was the true reason why the earl of Oxford was never brought to a Trial. The late James West, esq. Member for St. Alban's, and President of the Royal Society, gave the account of the fact to the late counsellor Gregg, in whose hand-writing it is now preserved. Mr. West assured Mr. Gregg, that he received it from serjeant Comyns's own mouth."

"It is an anecdote now generally believed, that though this dispute between the two Houses, which Article should be first proceeded on, was the ostensible cause for dismissing the Impeachment against lord Oxford, the real cause was a Letter or Paper signed by the duke of Marlborough just before queen Anne's death, which shewed his connexion at that time with the abdicated family, and which Letter lord Oxford had in his possession. In the Notes to the article Churchill in the Biographia, this anecdote is very well authenticated from the late James West, esq." 4 Hats. pp. 287, 288.

"On the 1st of July, 1717, lord Oxford being acquitted by the Lords upon the Commons not appearing to make good the Articles of Impeachment, from the dispute that had arisen between the two Houses touching the mode of proceeding, a motion is made in the House of Commons, that 'leave be given to bring in a Bill to inflict such pains and penalties upon lord Oxford as his traitorous practices and other high crimes and misdemeanors do deserve, and as shall be thought reasonable. The debate upon this question is adjourned till the 3d of July; when this motion is laid aside, and the Commons address the king, 'to except the earl of Oxford out of the Act of Grace which his majesty had been graciously pleased to promise, to the end that the Commons may be at liberty to proceed against the said Earl in a parliamentary way;' to which Address, the king, on the 6th of July, returns for Answer, 'that he will give directions in relation to the earl of Oxford, as desired by the Commons.' Accordingly in the Bill of Pardon, which passed soon after, there is a clause, excepting the earl of Oxford, Simon lord Harcourt, Matthew Prior, and Thomas Harley, out of the provisions of the Act." 4 Hatsell's Prec. 314, 315.

Macpherson, vol. 1, p. 486, of his "Original Papers," (As to which, see in this Collection, vol. 6, pp. 297 *et seq.* and other passages), gives the following, among other intimations, of Marlborough's correspondence with the court of St. Germains:

"When the earl of Marlborough and his wife, by their influence with the princess of Denmark, were accused of fomenting differences between the royal sisters, the earl, it now appears, was in correspondence with the late king. William, probably, though he knew not particulars, suspected in general the secret intrigues of Marlborough, when he sent him to the Tower, in the year 1692. James, from a diffidence of his former favourite, required actions as the proof of his sincerity. He had done considerable service to the party, before this period. But the most capital instance of his thorough repentance was the intelligence of the design against Brest, transmitted by him in the following letter to James, inclosed in one from colonel Sackville. Marlborough is supposed to have had more designs than one in this part of his conduct. He wished to serve James with Lewis the 14th, and to ruin general Talmash, as well as to be revenged of William. In king James's Memoirs, there is the following memorandum, written upon receipt of the letter, in his own hand: 'May 4th,

'lord Churchill informed the king of the design 'on Brest.'" Page 521, ann. 1694.

"The French translation of colonel Sackville and the earl of Marlborough's letters, from which they are now translated again into English, is in Nairne's hand.

"'TRANSLATION of a LETTER in cyphers from Mr. Sackfield, Major General of his Britannic Majesty's forces, to the Earl of Melfort.

"'I have just now received the inclosed for the king. It is from lord Churchill; but no person but the queen and you must know from whom it comes. Therefore, for the love of God, let it be kept a secret, even from lord Middleton.* I send it by an express, judging it to be of the utmost consequence for the service of the king my master; and consequently for the service of his most Christian majesty. You see, by the contents of this letter, that I am not deceived in the judgment I formed of admiral Russell; for that man has not acted sincerely, and I fear he never will act otherwise."

"'A TRANSLATION of Lord CHURCHILL'S LETTER to the King of England.

"'It is only to-day I have learned the news I now write to you: which is, that the bombketches and the twelve regiments encamped at Portsmouth, with the two regiments of marines, all commanded by Talmash, are destined for burning the harbour of Brest, and destroying all the men of war which are there. This will be a great advantage to England. But no consideration can prevent or ever shall prevent me, from informing you of all that I believe to be for your service. Therefore you may make your own use of this intelligence, which you may depend upon being exactly true. But I must conjure you for your own interest, to let no one know it but the queen and the bearer of this letter.

"'Russel' [See the Proceedings against him, vol. 14. p. 234.] "sails to-morrow, with forty ships, the rest being not yet paid; but it is said, that in ten days the rest of the fleet will follow; and, at the same time, the land forces. I have endeavoured to learn this some time ago from admiral Russell. But he always denied it to me, though I am very sure, that he knew the design for more than six weeks. This gives me a bad sign of this man's intentions. I shall be very well pleased to learn, that this letter comes safe to your hands.'"

"From one of the earl of Middleton's letters, addressed to Mr. Appleby, a feigned name for a correspondent in England, to be delivered to the Hamburgh merchant (that is, a member of the House of Commons, according to Dr. Hickes's cypher), there is reason to believe, that, about this time, Marlborough had engaged the prince and princess of Denmark to enter heartily into terms with their exiled father."

Somerville (note to History, p. 272,) takes notice, that the author of the Transactions during the Reign of Queen Anne, refers (p. 59) to a letter from lord Godolphin to the court of St. Germains, re-assuring them of his undiminished attachment to their cause, and to another from the duke of Marlborough, "in which he renewed his hypocritical professions of zeal for the Pretender; he had even the barefacedness to attribute the rejection of the proposals for peace, lately made by the French king, to their not comprehending any stipulation in that prince's behalf." Dr. Somerville then adds, "Mr. Hamilton does not mention the date of these letters. I am informed by principal Gordon of the Scotch College, Paris, who has had the opportunity of enquiring minutely about this subject, that the duke of Marlborough never wrote a single letter to St. Germains in his own hand, except one. They were all signed by him, but sent back, after copies of them were made out."

Mr. Laing, when relating the duke of Hamilton's tergiversation and treachery, during the discussion of the Articles of Union between England and Scotland, says, (vol. 4, note 8,) "A late historian of the Hamilton family, quotes a letter from Middleton to Hamilton, 'beseeching his grace, in behalf of his master, 'to forbear giving any farther opposition to 'the Union, as he had extremely at heart to 'give to his sister this proof of his ready com-'pliance with her wishes; not doubting but he 'would one day have it in his power to restore 'to Scotland its ancient weight and indepen-'dence.' A letter quoted as extant, might have passed as authentic: but the author, lest any doubt should be entertained that such a letter once existed, quotes another from Hamilton to his son: 'Tell my lord Middleton not to be un-'easy about his letter; I have been too sick to 'answer it, but I burnt it with other papers for 'fear of accident.' [Hamilton's Trans. during the Reign of Queen Anne, pp. 43, 44.] Till a letter mentioning that another had been burnt, shall be received as sufficient evidence to authenticate a quotation from that last letter which was burnt, it will be difficult to persuade the world that Godolphin and Marlborough meant to restore the Stuarts, or Harley to secure the Protestant Succession."

The Duke of Portland has very obligingly communicated to me the following article, which is among the Oxford Papers in his grace's possession; it is without signature or address:

"*Thursday, June* 6, 1717.

"My lord; I'la came to me in the House, and told me that Mr. Stanhope in the Secrett Com'tee made a speech to this effect, that he perceiv'd many difficultys wou'd arise in the prosecution of the Impeach't, and that now the

* "Even from lord Middleton," is interlined in Melfort's hand writing." Macph.

year was far advanced, he thought for his part that the best way to get rid of it, was to apply to the king, to desire him to insert a clause in the Act of Grace, that might determine it, and so al prosecution to cease upon it. He said also it was oppos'd by 3 or 4, but in the conclusion they came to a resolution of doing w't Mr. Stan' propos'd. He told me this with such assurance, that I am apt to believe it true, w'ch I need not tel y'u I am mighty glad off; and he desir'd y'u might have as early notice of it as possible, and y't he heard the Act wou'd come in on Saterday next."

The preceding paper, and that which is mentioned in a note to lord Oxford's Answer to the Second Article of Charge preferred by the Commons, are the only two interesting memoranda relating to this prosecution, which the Duke of Portland has discovered among his MSS.

I have not been able to discover any traditional or other corroboration, as to any of the particulars of the anecdote which I have cited from the Biographia. Mr. Coxe, in his Memoirs of Sir Robert Walpole, details some particulars of the proceedings against lord Oxford, but gives no intimation that he had ever heard or read of such a story.

During the prosecution of lord Oxford, the following Reports were made respecting proceedings in such cases:

May 25, 1717.

"The lord Trevor (according to order) reported from the Committee, appointed to search and report such precedents, as may the better enable this House to judge what may be proper to be done, on occasion of the petition of the earl of Oxford, and the Case of the said Earl, as it now stands before this House, That pursuant to the instruction given them, in the first place, to search for and report such precedents as relate to the continuance of impeachments from session to session, or from parliament to parliament, they had searched several precedents; and find,

"That on the 6th of December, 1660, an Impeachment against William Drake, citizen and merchant of London, was brought from the Commons, and read; charging him with printing a seditious pamphlet: and he was ordered to be apprehended as a delinquent.

"December 12, 1660, he was brought to the bar; and confessed he wrote the book mentioned in the Articles.

"December 19, the said Impeachment considered; it was ordered, and declared, That if this parliament be dissolved before this House have time to give judgment, the Attorney General should proceed against him at law, upon the said offence.

"Jan. 3, 1666, Articles of Impeachment, of High Crimes, &c. were delivered at a Conference, against the lord viscount Mordaunt.

"Jan. 10, he was ordered to put in his Answer.

"Jan. 17, he accordingly presented it.

"Feb. 7, a Conference and Free Conference were had, concerning this Impeachment.

"Feb. 8, 1666, the parliament was prorogued; and no further proceeding on that Impeachment after the prorogation.

"April 24, 1668, Articles of Impeachment, for High Crimes, &c. against sir William Penn, were delivered by the Commons at a Conference.

"April 27, he was ordered to answer.

"April 29, he delivered his Answer at the bar; and a copy of it was sent to the Commons.

"After two adjournments, by his majesty's desire; the parliament was, on the first of March, 1668, prorogued, by commission, to the 19th of October following; and no more proceedings were had concerning the said Impeachment.

"Dec. 5, 1678, lord Arundel of Wardour, earl of Powis, lord Bellasis, lord Petre and lord viscount Stafford, were impeached of High Treason, &c.

"Dec. 23, earl of Danby was impeached of High Treason; and Articles were brought up.

"Dec. 27, he was ordered to answer.

"The parliament was dissolved by proclamation, dated 24th of January, 1678.

"March 6, 1678, a new parliament met.

"13th of the same month, the parliament was prorogued to the 15th of that month.

"March 17, the House considering whether the last prorogation made a session, were of opinion, That it was a session in relation to the acts of judicature, but not as to the determining laws determinable upon the end of a session. And the same day it was referred to the Committee for Privileges to consider, Whether petitions of appeal, presented last parliament, be still in force to be proceeded on; and also to consider of the state of the impeachments brought up from the Commons' last parliament, and all the incidents relating thereto.

"March 18, report was made from the said Committee for Privileges, That upon perusal of the Journal of the 29th of March, 1675, they were of opinion, That in all cases of appeals and writs of error, they continue and were to be proceeded on *in statu quo*, as they stood at the dissolution of the last parliament, without beginning *de novo;* and also were of opinion, That the dissolution of the last parliament did not alter the state of the impeachments brought up by the Commons in that parliament.

"March 19, that Report was considered; and upon the question, was agreed to.

"March 20, 1678, the earl of Danby was ordered to answer; and divers further proceedings were had upon the said impeachments, in that and subsequent parliaments.

"Nov. 12, 1680, the Commons, by message, acquaint the Lords with their Resolution to proceed to the trial of the lords in the Tower, and forthwith to begin with viscount Stafford; and to desire a day for his trial.

"Whereupon his trial was appointed on the 30th instant.

"Nov. 30, his lordship's trial began in Westminster-hall.

"December 4, the lord high steward gave the House an account, That after viscount Stafford had summed up his evidence, and the managers had replied, his lordship propounded several points in law, arising out of the matter of fact, to which he desired to be heard by his counsel; one of which points was,

"Whether proceedings ought to be continued from parliament to parliament upon impeachments?

"To which the House, upon consideration, refused to hear his counsel.

"Dec. 7, Judgment upon him was pronounced, as usual in cases of High Treason.

"21st of the same month, Mr. Seymour was impeached of High Crimes, &c.; and Articles were brought up and read; and he was ordered to answer.

"December 23, he put in his Answer; and the same was read, while he was at the bar; and a copy of it to be sent to the Commons.

"January 3d following, which was the next day the House sat, he petitioned for a speedy trial. And a message was sent to the Commons, to give them notice of it; their lordships finding no issue joined by replication. And counsel were assigned him.

"January 8th, his trial was ordered to be on the 15th of the same January; and a message was sent to the Commons, to acquaint them with it, that they might reply if they thought fit. No further proceeding was had on that Impeachment.

"7th of the same January, sir William Scroggs was impeached of High-Treason; and Articles of Impeachment were brought up. He was bailed; and ordered to answer the 14th of the same month.

"The said 7th of January, the earl of Tyrone was impeached of High Treason.

"January 10th 1680, the parliament was prorogued, and dissolved by proclamation the 18th of that month.

"March 21, 1680, a new parliament met.

"24th of the same March, earl of Danby petitioned to be bailed: And the same day sir William Scroggs' Answer was read; as also his Petition, desiring a short day for the Commons to reply; copies of which Answer and Petition were sent to the Commons.

"No further proceedings were had against sir William Scroggs.

"March 26th, 1681, message from the Commons, 'That they, having formerly demanded judgment against the earl of Danby, 'desire now a day may be appointed to give it.'

"The said message was ordered to be considered on Monday next.

"28th of the same month, the parliament was dissolved.

"May 19, 1685, the House was acquainted, That the lords committed to the Tower upon impeachment had entered into recognizances, in the King's-bench, to appear the first day of next parliament; which was that day. Accordingly they were called to the bar, and their appearances recorded; and they petitioned for relief.

"May 22, 1685, upon consideration of the cases of the earl of Powys, lord Arundel, lord Bellasis, and earl of Danby, contained in their Petitions, it was resolved, upon the question, That the Order of the 19th of March, 1678-9, should be annulled and reversed as to Impeachments.

"May 25th, 1685, an order made, for the Attorney-General to have recourse to the indictments against the earl of Powys, lord Arundell, and lord Bellasis, in order to the entering a *noli prosequi* thereon, according to his majesty's warrant, and it was further ordered, that their bail should be discharged.

"June 1, 1685, upon motion on behalf of several peers, who were bail for the appearance of the earl of Powys, earl of Danby, lord Arundell, lord Bellasis, and earl of Tyrone in the kingdom of Ireland, the first day of this parliament, whose recognizances were entered into in the King's bench; it was ordered, that the said lords, as also all persons, peers or others, that were bailed for their appearance, should be discharged.

"October 26, 1688, the earl of Salisbury, and earl of Peterborough, were impeached of High Treason, in departing from their allegiance, and being reconciled to the church of Rome, by message from the Commons. And the earl of Peterborough, being, by the Black Rod, brought to the bar, was ordered to be committed to the Tower; and the earl of Salisbury, to be brought to the bar by the chief governor of the Tower, on Monday.

"[illegible]ober 28th, the earl of Salisbury accordingly was brought to the bar; and the said governor of the Tower was ordered to take him into his custody.

"27 January following, the parliament was prorogued; and dissolved by proclamation the 6th of February following.

"A new parliament met, 20th of March 1689.

"April 5, 1690, an order was made, to take into consideration, whether impeachments continue from parliament to parliament, on the Wednesday following.

"8th and 10th of the same month, consideration of that matter was adjourned.

"July 7, 1690, the parliament was prorogued.

"October 2, 1690, the earl of Peterborough petitioned to be discharged, having been kept prisoner in the Tower for almost two years, notwithstanding a dissolution and several prorogations had intervened, as also an act of free and general pardon: Whereupon the judges were ordered to attend, to give their opinions, whether he be pardoned by that act. The judges were also ordered to give their opinions, on the same matter, upon the earl of Salisbury's Petition, praying likewise to be discharged.

"6th of the same month, the judges, according to order, delivered their opinions, as follow; viz. That, if the said Earls crimes and offences were committed before the 13th of February, 1688, and not in Ireland nor beyond the seas, they were pardoned by the said act. And it was resolved that the said Earls should be admitted to to bail. And a committee was appointed to inspect and consider precedents, whether impeachments continue *in statu quo* from parliament to parliament.

"October 7, the said Earls were both bailed at the bar.

"30th of the same October, report was made from the committee, appointed the 6th of the same October, of several precedents brought to their lordships by Mr. Petit from the Tower; and also that they had examined the Journals of this House, which reach from the 12th of Henry the 7th; and all the precedents of impeachments since that time were in a list now in the clerk's hands; among all which, none are found to continue from one parliament to another, except the lords who were lately so long in the Tower.

"After consideration of which Report, and reading the orders made the 19th of March 1678-9, and the 22d of May 1685, concerning impeachments; and long debate thereupon; it was resolved, that the earl of Salisbury and earl of Peterborough should be discharged from their bail; and accordingly they and their sureties were ordered to be discharged from their said recognizances.

"A List has been produced before the Committee, which to them seems to be the List referred to in the said Report; which is ready to be produced, if the House shall think the same necessary.

"Nov. 12, 1690, upon motion, That a day be appointed, for the explanation of the [illegible] of the 30th of October last; it was ordered to take the same into consideration on the 18th of the same November, and all the lords to be summoned; on which day the House sat: but it doth not appear by the Journal that any thing was done in pursuance of that order.

"April 27, 1695, the duke of Leeds was impeached of High Crimes and Misdemeanors; and Articles were on the 29th of the same month exhibited against him. He put in his answer the next day; and a copy of it was sent to the Commons.

"May 1, following, a message was sent to the Commons, to put them in mind of the said Impeachment; the Lords conceiving the session could not continue much longer.

"May 3, the parliament was prorogued; and dissolved by proclamation, dated the 11th of October 1695.

"June 24, 1701, the House of Commons having impeached the duke of Leeds on the 27th of April, 1695; and on the 29th of the same month exhibited Articles against him, to which he answered; but the Commons not prosecuting; the said Impeachment and Articles were ordered to be dismissed.

"May 17, 1698, Peter Longueville was, amongst others, impeached of High Crimes, &c.; and Articles were brought up.

"May 27, he put in his Answer and pleaded Not Guilty.

"June 28, the trial of Goudet and others, upon the Impeachments against them, was appointed on the 4th of July next.

"The same day, the said Goudet, Barras, Seignoret, Baudowin, Santiny, Diharce, and Pearse, relinquished their pleas, and pleaded Guilty; and the Black Rod ordered to take them into custody.

"June 30, Dumaistre put in his Answer, and pleaded Guilty; and the Black Rod ordered to take him into custody.

"July 4, 1698, judgment was pronounced against the eight persons above-mentioned; and no further proceedings concerning Longueville.

"The next day the parliament was prorogued; and dissolved by proclamation, dated the 7th of July, 1698.

"The committee have also enquired of precedents of indictments against peers, which have been removed into the House of Lords by Certiorari, and the proceedings thereupon; and find, that, on the 19th of March 1677, the proceedings against the earl of Pembroke, upon an indictment, for the death of Nathaniel Cony, had before the commissioners of Oyer and Terminer at Hicks'-hall, upon which his lordship was found guilty of felony and murder, was brought into this House, in order to his trial.

"April 4, 1678, the said earl was tried, and found guilty of manslaughter.

"July 15, the parliament was prorogued.

"Nov. 11, 1685, the lord mayor and the rest of the justices of Oyer and Terminer and general gaol delivery for London and Middlesex were ordered to return, by virtue of his majesty's writ of Certiorari, the indictment of high treason, found before them, against the earl of Stamford, then prisoner in the Tower.

"Nov. 14, the indictment was delivered.

"Nov. 16, the said earl was ordered to be brought to the bar.

"Nov. 17, his lordship was brought accordingly, examined, and his trial appointed on the 1st of December following; and an address to his majesty, 'That a place be prepared in Westminster-hall for his trial.'

"Nov. 18, the king's answer was reported, That he had given order accordingly.

"Nov. 20, 1685, the parliament was prorogued; and, after several prorogations, was dissolved the 2d of July 1687.

"And there doth not appear any further proceeding on the said indictment.

"Jan. 4, 1692, the coroner's inquest was brought in, concerning the death and murder of William Mountfort, wherein the lord Mohun was found to be aiding and assisting.

"Feb. 4, his lordship was tried; and found Not Guilty, and discharged.

"March 14, the parliament was prorogued.

"Dec. 13, 1697, a writ of Certiorari was ordered, for removing the indictment found against the lord Mohun, concerning the death of William Hill.

"Jan. 10, 1697, resolved to proceed to his trial.

"July 4, 1698, the clerk of the crown read the indictment to his lordship; and he pleaded his majesty's pardon: which was allowed by the House; and he was discharged.

"March 13, 1698, an indictment against the earl of Warwick, for the murder of Coote, was brought by Certiorari.

"March 25, 1699, lord Mohun allowed a copy of his indictment.

"March 28, the earl of Warwick was tried, and found guilty of manslaughter.

"March 29, the lord Mohun was tried, and found Not Guilty.

"May 4, 1699, the parliament was prorogued."

Which Report being read by the clerk;

"It was proposed, to resolve, That the Impeachment of the Commons against the earl of Oxford is determined by the intervening prorogation." And after debate thereupon;

The question was put, "That it is the opinion of this House, that the impeachment exhibited by the Commons of Great Britain, against Robert earl of Oxford and earl Mortimer, for High Treason and other High Crimes and Misdemeanors, is determined by the intervening prorogation?"—It was resolved in the negative.

"Dissentient,

"1. Because there seems to be no difference in law between a prorogation and a dissolution of a parliament, which, in constant practice, have had the same effect, as to determination both of judicial and legislative proceedings; and consequently this vote may tend to weaken the Resolution of this House, May 23d, 1685, which was founded upon the law and practice of parliament in all ages, without one precedent to the contrary; except in the cases which happened after the order made the 19th of March, 1678, which was reversed and annulled in 1685; and in pursuance hereof the earl of Salisbury was discharged in 1690.

"2. Because this can never be extended to any but peers; for, by the statute 4 Edw. 3, no commoner can be impeached for any capital crime: And it is hard to conceive why the peers should be distinguished, and deprived of the benefit of all the laws of liberty to which the meanest commoner in Britain is entitled; and this seems the more extraordinary, because it is done unasked by the Commons, who, as it is conceived, never can ask it with any colour of law, precedent, reason, or justice.—Fr. Roffen. Abingdon, Dartmouth, Mansel, Hay, Foley, Nottingham, North and Grey, Bruce, Bathurst, Guilford."

May 27, 1717.

The lord Trevor, from the committee appointed to search and report such precedents, as may the better enable this House to judge what may be proper to be done on occasion of the Petition of the earl of Oxford, and the case of the said Earl as it now stands before this House, acquainted their lordships, "That the committee, pursuant to the instruction given them, to search and report such precedents as relate to the appointing a time of trial, had searched precedents accordingly; which he was ready to report, when the House will please to receive the same."

Ordered, That the said Report be now received.

Accordingly his lordship reported, "That the said committee find,

"That, on the 21st of January, 1666, after receiving a Message from the House of Commons, to desire this House would appoint a day for hearing the cause concerning the lord viscount Mordaunt, upon the Impeachment brought up from the House of Commons against him; it was ordered, "That Saturday morning then next, being the 26th of the same January, be appointed to hear the cause, upon the said Impeachment against his lordship."

"26th of the same January. Divers members of the House of Commons were present at the bar, to manage the evidence against the said lord viscount Mordaunt.

"6th of May 1679. Upon a Message from the Commons, That they were ready to make good the Articles of Impeachment for High Treason, against the earl of Powys, viscount Stafford, lord Petre, lord Arundell of Wardour, and the lord Bellasis; it was resolved, upon the question, 'That the said Lords should be brought to their trials on that day sevenuight.'

"11th of the same month. A committee of this House was appointed, to meet with a committee of the Commons, to consider of propositions and circumstances, in reference to the trials of the Lords in the Tower.

"12th of the same May. Upon report, That the committee of both Houses had met, and made an entrance into their business; the trial of the said five Lords was put off till further order.

"16th of the same month. Upon a Report from the committee of both Houses, it was resolved, upon the question, That Thursday then next, being the 22nd of that month, should be appointed to begin the trials of the said five lords.

"20th of the same May. Upon consideration of the Report yesterday from the Committee of both Houses, Tuesday then next, being the 27th of the same month, was appointed for the trials of the said five lords.

"12th November, 1680. Upon a Message from the Commons, to desire a convenient day for the trial of the lord viscount Stafford; his trial was appointed on Tuesday the 30th of the same month. On which day his trial began.

"21st December following. Articles of Impeachment, for High Crimes, &c. were brought up against Mr. Seymour and read.

"23rd of the same December. He put in his Answer.

" 3rd January following. He petitioned for a speedy trial. And a Message was sent to the Commons, to give them notice of it, finding no issue joined by replication.

" 8th of the same January. Mr. Seymour's trial was appointed to be on Saturday the 15th day of the same month, upon the Articles brought up against him by the Commons for High Crimes and Misdemeanors. And a Message was sent to the Commons, acquainting them with it, that they might reply if they thought fit.

" 3rd June 1698. After reading the replications of the Commons to the Answers of John Goudet and others, impeached by the Commons of High Crimes and Misdemeanors; their trial was appointed to be on Thursday the 9th of the same month at the bar of this House.

" 8th of the same month. Upon a Message from the Commons, That, by reason of extraordinary business, they could not be ready to prosecute the said Impeachment; the said trial was ordered to be on Thursday the 16th of the same month: on which day a Conference was had about the place of trial.

" 28th of that month. Their trials ordered to be proceeded on, the 4th of July following, in Westminster-hall.

" 20th of May, 1701. A Message was sent to the Commons, to acquaint them, That the earl of Orford having desired a day for his speedy trial; their lordships, finding no replication, give them notice thereof."

" 30th of May, 1701. The earl of Orford's trial, upon the Articles of Impeachment brought up against him from the Commons, for High Crimes and Misdemeanors, was appointed on Monday the 9th of June following. And a Message was sent to the Commons to acquaint them, That they might reply if they thought fit.

" The next day. A Message was brought from the Commons, That they had prepared a replication to his lordship's Answer; but deferred bringing it up, thinking it more proper to begin with the trial of the lord Sommers.

" 3rd of June following. In Answer to which Message, a Message was sent to the Commons, That their lordships, having been desired by the lord Sommers to appoint a day for his speedy trial, and finding no replication, give them notice of it, that they might reply if they thought fit; and that their lordships would proceed to the trial of any of the impeached lords whom the Commons shall be first ready to begin with, so as there be no occasion taken from thence for any unreasonable delay in the prosecution of any of them.

" 5th of the same month. A Message was brought from the Commons, That, on consideration of their lordships' Message of the 31st of May, they thought it their undoubted right, that no day ought to be appointed by this House for the trial of any Impeachment, without some previous signification from the Commons of their being ready to proceed.

" 9th of the same month. A Message was sent to the Commons, in Answer to the Message of the 5th, That their lordships thought themselves obliged to assert their undoubted right to appoint a day for the trial of any impeachment, if they saw good cause for it, without any previous signification from the Commons of their being ready to proceed; which was warranted by many precedents, as well as consonant to justice and reason: and their lordships, according to the example of their ancestors, would always use that right, with regard to the equal and impartial administration of justice, and with a due care to prevent unreasonable delays.

" 9th of the same June. The lord Sommers' trial, upon an Impeachment likewise for High Crimes and Misdemeanors, was appointed on Friday the 13th of the same month.

" 12th of that month. Upon considering the Message from the Commons of yesterday, for putting off his lordships' trial to a further day; his trial was ordered to be on the 17th of that month.

" 17th of the same June. The Commons, in a Message, among several other things, declared, They peremptorily refused to proceed to the trial of the lord Sommers that day: notwithstanding which, the same day his lordship was tried in Westminster-hall, and acquitted of the said Articles; and the Impeachment was dismissed.

" 18th of the same June. The trial of the earl of Orford was ordered to be proceeded on, the 23rd of that month; on which day his lordship was also tried and acquitted.

" 3rd February, 1709. Upon reading the replication of the Commons to the Answer of Dr. Sacheverell, put in to the Articles of Impeachment against him for High Crimes and Misdemeanors; his trial was appointed, at the bar of this House, on Thursday the 9th of the same month.

" 6th of the same February. Upon a Message from the Commons, concerning the place of trial; an Address was made to her majesty, for a place to be prepared in Westminster-hall, for his trial.

" 18th of that month. His trial was appointed, in Westminster-hall, the 27th of the same month: on which day his trial began.

" 8th of February, 1715. The earl of Wintoun's trial was appointed the 16th of the same month, upon an Impeachment of the Commons against him for High Treason.

" 13th of the same month. Upon his Petition for witnesses, the time appointed for his trial was enlarged to the 8th of March then next.

" 5th of March following. Upon another Petition, That his witnesses were not arrived; the time for his trial was enlarged to the 15th of the same month.

" 12th of the same March. A Petition of the said Earl, for enlarging the time, was rejected.

" 18th of that month. His trial was proceeded on."

June 7, 1717.

The earl of Clarendon reported from the Committee, appointed to search precedents, and report what is further proper to be done, in order to the Trial of the earl of Oxford, "That they had accordingly inspected precedents; and offer the rules and methods following to the consideration of the House; viz.

"That an Address be presented to his majesty, that he will be pleased to give order, that such guards do attend, during the Trial of Robert earl of Oxford and earl Mortimer, upon the Impeachment exhibited against him by the House of Commons, as hath been usual in cases of trials.

"That, on the day of trial, the whole body of the House of Peers meet here, in their robes, at nine o'clock in the morning; and that their lordships do go down into Westminster-hall, in their robes, in order to the Trial of the said Earl.

"That the same method be observed, in going into Westminster-hall, as was on going thither, upon the 15th of March, 1715, to the Trial of the earl of Wintoun.

"That the Articles of Impeachment exhibited by the House of Commons against the earl of Oxford, and the Answer of the said Earl, as also the Replication of the Commons thereunto, be read, as soon as the said Earl is brought to the bar.

"That the Lord High Steward be directed to acquaint the said earl of Oxford, and all other persons who may have occasion to speak to the Court, That they address themselves to the Lords in general, and not to the Lord High Steward.

"That the counsel assigned the said earl of Oxford may be present when he is at the bar, in order to be heard, touching any point or matter of law, if any such shall arise, upon the two Articles of Impeachment exhibited against the said Earl for High Treason, or either of them; but that the said Earl may be allowed to make his full Defence, by counsel, upon the Articles for High Crimes and Misdemeanors, as well to matters of fact, as to any point or matter of law which may arise thereon.

"That the witnesses which shall be produced by the earl of Oxford, to be examined in his Defence, as well to the two Articles exhibited against him for High Treason, as to the other Articles for High Crimes and Misdemeanors, shall be examined upon oath; which oath shall be administered in like form as an oath was directed by this House to be administered to any witnesses who should be produced by the earl of Wintoun at his trial.

"That every peer, when he gives his judgment, as well on the several Articles for High Crimes and Misdemeanors, as for the Articles for High Treason, shall declare his opinion, guilty, or not guilty, upon his honour, laying his right hand upon his breast.

"That the Lord Great Chamberlain be desired to take care that places behind the peers be kept for peeresses and their daughters.

"That, during the said Trial, the avenues to this House be guarded; and care taken, that none be admitted but lords' servants, and the necessary attendants of this House.

"That the lord mayor and sheriffs of the city of London, as also the deputy lieutenants and justices of peace for the county of Middlesex, and the justices of peace for the city and liberties of Westminster, be required to take care for the safe guarding of the gates of the said cities, and other necessary places within their several jurisdictions; thereby to prevent the unnecessary concourse of people resorting to Westminster, and preserving the peace, during the said Trial.

"That all the constables of Westminster be required to attend in the Palace-yards at Westminster, during the said Trial, to take care that all coaches whatsoever, when they have set down the persons they bring, be turned away through the Old Palace-yard, and so by Lindsey House, and from thence so that they cannot by any way return through King-street until seven o'clock in the evening.*

"That all the lords of this House, who have personally appeared, or will personally appear, in this House, before the Trial of the said earl of Oxford, in Westminster-hall, shall have seven tickets each delivered to him or them, by the Lord Great Chamberlain's servants, if he or they personally come for them to the prince's lodgings, near the House of Peers: and if any lord desires tickets for another lord, they are to be delivered, if two lords do say 'such lord, they believe, will personally appear before the said Trial.'

"Which said rules and methods, resolved on by the Committee, were read by the clerk.

"And the first Resolution being again read, viz.

"That an Address be presented to his majesty, That he will be pleased to order such guards to attend, during the Trial of the said Earl, as hath been usual in cases of trials.

"The same was agreed to; and ordered to be presented to his majesty by the lords with white staves.

"Then the four Resolutions next following were read a 2nd time, and severally agreed to.

"And the next Resolution being also read a 2nd time; viz.

"That the counsel assigned the said earl of Oxford may be present, when he is at the bar, in order to be heard, touching any point or matter of law, if any such shall arise, upon the two Articles of Impeachment exhibited against the said Earl for High Treason, or either of them; but that the said Earl may be allowed to make his full Defence, by counsel, upon the Articles for High Crimes and Misdemeanors, as well to matters of fact, as to any point or matter of law which may arise thereon."

"The earl of Clarendon acquainted the House, That some doubt arising in the Com-

* "Memorandum. The time for the return of the coaches was altered, on considering this Report."

mittee, upon preparing and settling the same, by reason of the act of parliament in the 7th of king William, for regulating Trials in cases of Treason; and the Standing Order of this House, of the 28th of May, 1624, touching judicature, and the allowance of counsel in cases of moment; he was directed, by the said Committee, to inform the House thereof, as a matter worthy of their lordships' particular consideration.

"Then the preamble of the said Act, and the said Standing Order of this House, being read:

"It was proposed, to agree to the said Resolution. And the same being objected to:

"It was proposed, as an amendment, to leave out these words; viz. 'to be heard, touching any point or matter of law, if any such 'shall arise, upon the two Articles of Impeachment exhibited against the said Earl for High 'Treason, or either of them; but'] And, after debate;

"The question was put, Whether those words shall stand part of the said Resolution? It was resolved in the affirmative.

"Then the five following Resolutions were read, and severally agreed to.

"And the next Resolution, for preventing the return of coaches through King-street, during the said Trial of the earl of Oxford, till five o'clock in the afternoon, being read:

"It was agreed, to alter the time, by inserting, instead thereof, seven o'clock in the evening.

"And then the last Resolution was also read, and agreed to."

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456. Proceedings on the Case concerning the King's Prerogative in respect to the EDUCATION and MARRIAGE of the ROYAL FAMILY: Hilary Term, 4 GEORGE I. A. D. 1718.

["The following Case is chiefly taken from the Reports of lord Fortescue, who was a judge of the Common-Pleas at the time the opinion of all the judges was taken upon it. Fortesc. Rep. 401. The only addition we make to lord Fortescue's state of the arguments is to supply a considerable deficiency in the copy of the written opinion given by the two dissenting judges. What we have introduced for this purpose is the opinion of the two dissenting judges at length, instead of the imperfect copy of it in lord Fortescue. This part is taken from a book entitled the Life of Judge Price.* In lord Fortescue's Report, the Case is called 'The grand Opinion for the prerogative concerning the royal family.'

"Since the Case we now present to the reader, one part of the subject of it has undergone a parliamentary discussion, the occasion of which was the act passed in 1772, for better regulating the marriages of the royal family. 12 G. 3, c. 11. The preamble to that act contains a declaration, that 'the kings of this realm have ever been intrusted with the care and approbation of such marriages:' The generality of this recital, together with the restraints introduced to guard the descendants of George the second from improper marriages, caused much debate in parliament;† both on the ancient law and the policy of the new regulation concerning this important subject. In the House of Lords two protests were signed against passing the act; and these will enable the reader to judge, what were the principal objections to it. See the History and State Papers in the Annual Register for 1772, pp. 252, *et seq.* and Almon's Parl. Deb. for the same year. Whilst the act was under consideration of the Lords, they consulted the judges on the extent of the prerogative of the crown in respect to marriages of the royal family; who concurred in opinion, that the approbation of the marriages of the king's grand-children belonged to his majesty, and also the approbation of the marriage of the presumptive heir of the crown, in whatever degree related to the king; but confessed, that they could not precisely as-

* See in vol. 12, p. 200, an account of the Trial of the Seven Bishops in a letter from Mr. Robert Price to the duke of Beaufort.

† It may be worth notice, that in the House of Lords, the learned and pious Lowth, then bishop of Oxford, who was much attached to the king, not only voted but spoke against this Bill, as repugnant to the precepts of morality and of religion. A very eminent member of that House, who at different periods of the present reign filled very high offices in the state, represented to me Lowth's speech as highly dignified, impressive and persuasive, and superior to that, which was upon the same occasion delivered by lord Chatham.

This conscientious opposition lost not Lowth the royal favour, which he well deserved. In the year 1777, he was made bishop of Oxford; and in 1783 the archbishopric of Canterbury was offered to him. Some apparently groundless doubts have been stated concerning the operation of the Royal Marriage Act upon marriages celebrated in foreign countries, and also concerning marriages with Papists celebrated under the provisions of the second clause of the statute. These topics are treated of in the recently published first volume of Mr. Madock's Life of Lord Sommers.

certain, to what other branches of the royal family this prerogative extended. Besides the instances of the crown's interposition noticed in the following case, our late most distinguished commentator on the law of England refers to many others, which he arranges according to the degrees of relationship. 1 Blackst. Comment. 8th edit. 225. See, also, the Case of the countess of Shrewsbury, *ante*, vol. 2, p. 769."]

"Whoever consults the Case, referred to the Judges by George the 1st upon the question, whether the grandfather being king, or the father being only heir apparent, hath a right to take care of the education of the royal children, will find that the material precedents are too few in number to settle that very important point." Barrington, Obs. on 1 Ric. 2.

Mr. Barrington was led to this observation by consideration of the uncertainty in our law, respecting the appointment of a protector, guardian or regent for the realm, and for a minor king or queen. Other incidents to the office of protector, guardian, or regent, seem to be equally unsettled by the common law, or by any fundamental statute. See Blackst. Comm. book 1, chap. 7, vol. 1, p. 248. Nor are these the only important points of constitutional law to which this observation is applicable. In the years, 1788, 1789, great difference of opinion prevailed among the most eminent lawyers, as well as statesmen, as to the mode of supplying the executive power in cases of delirium, or other such incapacity of the king. (It is to be hoped, that Mr. Hargrave will incorporate into his 'Jurisconsult Exercitations,' now in course of publication,) the valuable tract, which he published, under the title of 'Brief Deductions,' &c. as to this question.) In like manner, I apprehend it is still left unsettled, how the kingly office should be executed, or the executive power supplied, upon the death of a king leaving kindred, whose right of succession might be defeated by birth of a child, who at the time of such death was in 'ventre sa mere.'*

Mr. Burke, in his Reflections on the French Revolution, has with admirable eloquence exposed the folly of previously subjecting every political contingency to the generalities of abstract speculation. On the other hand, the inconvenience of leaving great questions to be determined in the moment of emergency is obvious.

* In the debate in the House of Commons, upon the Address in answer to the king's Message (Nov. 11th, 1680) Mr. Trenchard says, "If a king die, leaving a queen, the next heir is presently proclaimed, to prevent an interregnum; though there be a possibility of the queen's being with child, to whom the right should in the first place belong."

Mr. Christian, (animadverting in a note to Black. Comm. book 1, ch. 4, vol. 1, p. 225) upon the case in the text, says, "The authorities and arguments of the two dissenting judges, Price and Eyre, are so full and cogent, that if this question had arisen before the judges were independent of the crown, one would have been inclined to have suspected the sincerity of the other ten, and the authority of the decision."

With respect to the commissions of the judges, and other particulars respecting their dependence upon the crown, during a considerable portion of the seventeenth century, see at vol. 12, p. 257, some interesting information, collected by the very learned vindicator of Mr. Fox's History.

As to the succession of some of the Judges, during the last years of Charles the 2d's reign, Mr. East has inserted the following particulars in a Note to p. 105, of the 14th volume of his Reports:

"Sir Francis Pemberton was Chief Justice of the Common Pleas at the time of Lord Russel's trial at the Old Bailey, on the 13th of July, 1683, and was succeeded by sir Thomas Jones in the September following. A memorandum, in p. 10, (of the second series of paging) of the Great Quo Warranto case against the city of London, says that when the demurrer was joined, viz. Mich. Term, 34 Car. 2, (A. D. 1682,) Mr. Serj. Pemberton was Chief Justice of the King's-bench, but before Hilary Term, that it came to be argued, he was removed and made Chief Justice of the Common Pleas, and sir Edmund Saunders was made Chief Justice of the King's-bench. And it appears from p. 119, (the last series of paging) of the same book, that judgment was given in Trinity Term, 35 Car. 2, and that the Lord Chief Justice Saunders died either the day on which judgment was given, or the next day.

Amongst the rolls in the Crown-office of the King's-bench, I found writs tested Edmund Saunders in Hilary Term, 34 and 35 Car. 2. Amongst others there is one so tested on the 29th of January, 34 Car. 2, and another on the 12th of Feb. 35 Car. 2, the commencement of the reign being on the 30th of January. The writs continue tested by Saunders into Trinity Term, 35 Car. 2; one so tested was of the 8th of June, 35 Car. 2. But on the 27th of June, 35 Car. 2, they are tested Thomas Jones, who was then the senior puisne judge of the court, in whose name writs are tested on the vacancy of the chief justiceship. From the number of writs tested on the 27th of June, it seems as if it was the last day of Trinity Term in that year. The first writ I found upon the roll tested George Jefferies, as chief justice, was of the date of the 23rd of October, 35 Car. 2. [N. B. Michaelmas Term

has since been contracted by st. 24 G. 2, c. 48.] The next is of the 3rd of November, though Rapin (vol. 2, p. 733,) says, that sir George Jefferies was appointed chief justice of the King's-bench, in December, 1683.

The Chronica Judicialia state, that sir Francis Pemberton was appointed chief justice of the Common Pleas, on the 22nd of January, 1682; which as the civil year then began in March, answers to the day before Hilary Term, 34 and 35 Car. 2; and in Trinity Term following, (i. e. Tr. 35 Car. 2,) which was just before the trial of lord Russell, it appears by the book of fines in the Common Pleas, that sir Francis Pemberton, as chief justice, took acknowledgments of fines in that term. The Chronica Judicialia mention the appointment of sir Thomas Jones, as lord chief justice of that court, on the 29th of September, 1683.

See, too, in pp. 264, 265, of vol. 12, the Resolutions of the Commons in 1680.

Bishop Burnet, in relating the history of the year 1692, tells us, that "Among the bills that were offered to the king, at the end of the session, one was to secure the judges' salaries; and to put it out of the king's power to stop them. The judges had their commission during their good behaviour; yet their salaries were not so secured to them, but that these were at the king's pleasure. But the king put a stop to this, and refused to pass the Bill: for it was represented to him, by some of the judges themselves, that it was not fit they should be out of all dependence on the court; though it did not appear, that there was any hurt in making judges, in all respects, free and independent."

By stat. 13 W. 3, c. 2, it is enacted, That the commissions of the judges shall be made, 'quamdiu se bene gesserint,' and their salaries ascertained and established: but that it may be lawful to remove them on the address of both Houses of Parliament (see 1 Blackst. Comm. 267.) By the operation, therefore, of this statute, those most important and reverend magistrates are, in the exercise of their functions, exempted from all influence, arising from the apprehension that they may be removed from their offices by the arbitrary authority of the prince upon the throne, (as to which see Mr. Serjeant Heywood's Vindication as already cited. See, too, in particular, Whitelocke's anecdote relative to the conduct of judge Croke in the Ship-money Case.) Still, however, it was held, that their commissions became vacant upon the demise of the crown, until by 1 Ann. stat. 1, c. 8, they were continued for six months after such event: so that upon a prospect of the approaching termination of a reign, the judges were liable to be seduced into disingenuous compliances with the wishes of the apparent successor, by the contemplation of his power to displace them upon his accession, or to conciliate his favour by indications of a disposition readily to yield to the will and pleasure of the prince, for the time being, on the throne.*

To remedy this inconvenience, his present majesty, king George the 3rd, in the commencement of his reign, (graciously declaring, "That he looked upon the independence and uprightness of the judges, as essential to the impartial administration of justice; as one of the best securities of the rights and liberties of his subjects; and as most conducive to the honour of the crown;") was pleased to recommend, that the judges should be continued in their offices during their good behaviour, notwithstanding any demise of the crown; which was accordingly enacted by stat. 1 George 3, c. 23.]

THE judges met on the 22nd of January in Hilary term in the fourth year of his late majesty king George, and in the year of our Lord 1718, at the right honourable the lord Parker's chambers in Serjeant's-Inn in Fleet-street, he being then lord chief justice of England, (afterwards lord chancellor of Great Britain) in pursuance of the then lord chancellor Cowper's letter from the king.

The judges being met, the chancellor's letter was read, which was to signify the king's pleasure, that all his judges should meet, with all convenient speed, and give him their opinion upon the following question,† viz.

"Whether the education, and the care of the persons of his majesty's grand-children, now in England, and of prince Frederick, eldest son of his royal highness the prince of Wales, when his majesty shall think fit to cause him to come into England, and the ordering the place of their abode, and appointing their governors, governesses and other instructors, attendants and servants, and the care and

* Yet in the trial (April 30th, 1792,) of an action, which was brought by Mr. Fox against Mr. Horne Tooke, the defendant said, "I do not believe the dependence of the judges on the crown was so great formerly as at present, I believe the judges then were less dependent on the crown, and more dependent on the people, than they are at this hour."

Of the popularity to be sought by a judge, lord Mansfield said something in his speech (see it in this Collection,) June 8, 1768, in Wilkes's Case; and what lord Mansfield then said, Mr. Horne Tooke afterwards made the subject of some contemptuous animadversion. See, in this Collection, his speech on Nov. 24, 1777, when he came to receive the judgment of the court of King's-bench, upon his conviction for publishing a libel against the king's troops.

† As to the king's right extrajudicially to demand the opinions of the judges on questions in which the crown is interested, See Mr. Hargrave's note (5) to Co. Lit. 110, a.

approbation of their marriages, when grown up, do belong of right to his majesty, as king of this realm, or not."

Soon after the judges were met, they had a message sent them, from his royal highness George, then prince of Wales, now king of Great Britain, by his secretary Mr. Molineux, now deceased, and by his own solicitor-general, Mr. Carter, since sir Lawrence Carter, a baron of the Exchequer, to this effect: that his royal highness the prince of Wales, understanding that a question relating to his right of guardianship to his children was before them, desired, that before any determination was had upon it, they would give leave that he might be heard by his counsel concerning the same, and then the messengers withdrew.

After which the judges having consulted together about this Message, agreed on this answer, viz.

"We have considered of what you have been pleased to propose from his royal highness the prince of Wales, and we are all of opinion, that in cases wherein our advice is required by his majesty, we cannot hear counsel without his majesty's leave."

The same messengers being called in again, the said answer was given to them by the lord chief justice Parker in the name of all the judges.

Thereupon the judges agreed to acquaint the lord chancellor with this message, and with the answer, in order to acquaint the king.

Immediately after this, without loss of time, the judges entered on the consideration of the question referred to them.

Just. *Blencow.* I do not see, my lords, but marriage takes in the whole question, but let us debate the whole matter minutely, and give our opinions *seriatim.*

Just. *Dormer.* For the king. What is very material to this purpose, is, the Marriage Articles of Car. 1, then prince of Wales, with the infanta of Spain, in the life-time of his father, king James 1, under the great seal. One of those Articles relates to the education of the issue of that marriage, which was, that the sons and daughters, born of that marriage, should be under the care, and brought up by the infanta of Spain until the age of ten years. Thereupon the prince himself says, if they thought that term was not enough, that he would intercede with his father, the king, that the ten years of education with the infanta might be lengthened to twelve years: and says further, 'and I promise, and freely, and of mine own accord swear, if it happen that the intire power of disposing this matter be devolved to me, I will approve of the said term of twelve years. And these Articles were sworn to by both king and prince. 1 Rushworth 86, 87.

Chief Justice *King*, afterwards lord chancellor, quoted Rymer, 4 tom. fol. 605, 608. 8 Edw. 3, and fol. 620 and 624.

Lord *Parker*, Chief Justice. The case of H. 3, is very material. The king's sister Joan was abroad, and with her own mother in France, and yet the king here in England made the match with Alexander king of Scotland. The king says, "dabimus ei in uxorem, et nos et concilium nostrum fideliter laborabimus ad eam habendam." Rymer, 1 tom. p. 240, 356. 4 H. 3, anno 1220. "Et si forte eam habere non poterimus, dabimus ei in uxorem Isabellam junior' sororem nostram." And many other strong expressions there are, as "maritabimus et concessimus in uxorem; laborabimus per nos et amicos nostros." Rymer, vol. 1, 241, 407. Madox Tit. Aid 412. H. 3 had aid to marry his sister. 12 Co. Rep. 29, 30.

The king of Sweden was proposed to the lady Elizabeth, (afterwards queen Elizabeth) for marriage; but she refused, because it was not first communicated to her majesty the queen. Cotton's Record, 326.

There is also the famous case of the countess of Shrewsbury, and she was sent to the Tower, and imprisoned there for a high misdemeanor and great contempt, in being privy to the flight of lady Arabella, who being of the blood royal, had married one Mr. Seymour without the consent of the king, and he was likewise imprisoned in the Tower for that marriage.* Co. Rep. 12, p. 94.

In the case of the duke of York, being to be married to the duchess of Modena, there was an Address of the House of Commons to the king, that he might not be married to that princess. The king's Answer (which was remarkable) was, that the marriage was completed, and by his royal authority and consent. See lord Clarendon's History.

About December, 1699, an Address was moved for by the House of Commons to the king, to remove the then bishop of Salisbury from being preceptor to the duke of Gloucester, and it passed in the negative, which shews the parliament thought the power to be in the crown.

Another instance is, the case of the earl of Marlborough. The king appointed him governor of the duke of Gloucester, as a mark of his qualifications for an employment of so great a trust, and as an instance of this prerogative.

So in the case of the marriage of the princess of Orange, it was made wholly by the king, against the father's consent.

In Rymer, tom. 8, 698, there is a power given by the king to certain lords to treat of a marriage of the king's son, the prince of

* See vol. 2, p. 1. Much very curious information and learning connected with this marriage is to be found in Mr. Hargrave's Preface to lord Hale's Treatise on the Jurisdiction of the Lords' House, and in Mr. Luders's Tract on the right of succession to the crown in the reign of queen Elizabeth: and there are some interesting Articles relative to it among the Harl. and Cotton MSS. in the British Museum.

Wales, with one of the daughters of John duke of Burgundy, and earl of Flanders.

Friday, Jan. 24, 1717.

The Judges met again at the same place, and thereupon the passage in Edw. 5, was read out of Kennett's History of England, viz. The queen continuing in the sanctuary with her son, the duke of York, the archbishop of Canterbury was sent by the duke of Gloucester, and other lords, to the queen, to persuade her to deliver up the duke of York, or else they were to take him away by force.

Here the prince of Wales's secretary, the said Mr. Molineux, attending the judges, with Mr. Serjeant Reynolds the prince's counsel, sent in to the judges, and brought an order with them from the king in the following words:

"The king having been informed that his royal highness the prince of Wales desired to be heard by his counsel, his majesty's pleasure is, that any one single person that his royal highness shall think fit to appoint may apply to the judges, and shall be admitted to lay before them what he has to offer in behalf of his royal highness, in relation to the question before them."

Upon this Mr. Molineux offered to come in, but he was refused to be admitted, because he was not within the order of his majesty; but Mr. Serjeant Reynolds, afterwards lord chief baron, was admitted as counsel for the prince of Wales, according to the king's leave, and argued as follows:

Reynolds, serjeant at law for the prince. My lords, I have orders from the prince of Wales to attend on a question relating to the guardianship of his children.

Whereupon the lord chief justice Parker informed him exactly what the true question was, which was read to him *verbatim*, though he confessed he knew what the question was before he came.

And then the Serjeant went on thus. The guardianship of the children of right belongs to the father. 3 Co. 37, Ratcliff's case. 2 Roll's Abr. 40, 41, 42. The case of the father and grandfather is distinctly considered, and the custody appears 'to belong to the father, and not to the grandfather, and so is 30 Ed. 3, 17, *a*. and Vaughan 180. None can have the custody of the son and heir apparent but the father. Co. Litt. 84, *a*. In the case of younger children the argument is as strong against the grandfather, and so is 4 and 5 Ph. & M. cap. 8. Now why is the power here supposed to be in the grandfather, when 12 Car. 2, is positive that the power is in the father, and that the father can appoint a tutor and guardian, and the prince of Wales is within that act? 2 Roll's Abr. tit. Guardian, p. 37. Though the prince is but a subject, yet in dignity he is made much greater, and supposed in some cases to be almost equal with the king, as Seld. tit. Honour, 495. So that the reason should be stronger for the prince to have greater power than ordinary persons have. Now as to Bracton, who treats of this subject, that is transcribed from Justinian. Therefore that book and the instance there ought not to be regarded, for he deviates from the common law, and is nothing but civil law. Vide Selden's Dissertation on Fleta.

There is little to be found in Rymer concerning this matter, for there is no instance where there is a father and grandfather alive together, but one in the 8th vol. Rymer, p. 608. In H. 4th's time, grants were indeed made by the king for the maintenance of the earl of March in the custody of the prince of Wales. But there is nothing here can establish a prerogative in the crown. I have only looked over the first ten volumes of Rymer, and shall not trouble your lordships with history, as that of Ed. 5, in Kennett's history, where the queen said, that she had advised with learned counsel, and they told her that she had the right of wardship to the duke of York.

There is no instance or case whatsoever in any law book or record, in the case of the crown, or indeed any where else, that the custody belongs to the grandfather, nor was ever claimed or pretended to by the grandfather.

As to marriage, every man may marry his daughter where he pleases. The ancient feudal law did extend pretty far as to marriages. Britt. cap. 67, 68, p. 168, *b*. So is Co. Litt. 140, and never denied, but only in the case of a widow holding of the crown, who cannot marry without leave of the crown. Mag. Cha. cap. 7. 2 Inst. 18. 6 H. 6. Cotton's Records.

Marriage always belongs to the father, and the prince of Wales here would be entitled to aid 'pur file marrier.' It is true the statute of 28 H. 8, cap. 18, makes it high treason to marry any of the royal family; but then this shews it was lawful before this act, because restrained by act of parliament, and now that act is repealed.

Rymer, vol. 4, 605, 606, which was in 8 Ed. 3, several procuratorial letters 'quantum in nobis' were granted to the archbishop of Canterbury to marry, and in page 620, are procuratorial letters, in the case of Edmund earl of Cornwall, 'quantum in nobis' to be married. Sandford 210.

There is one instance indeed in Rymer of the marriage of a daughter in the life-time of the father, who was the king's sister, which is in vol. 1, Rymer 407, and in 26 H. 3, 'de matrimonio contrahendo, &c. promittimus et modis quibus poterimus laborabimus per nos et per amicos nostros.' But this shews it was not done by the prerogative alone, and indeed there is nothing to support any notion of that nature. As to the case in Rushworth, p. 87, 88, concerning the oath and marriage articles there mentioned, they were allowed to be contrary to the known laws of England, and the treaty therefore confirmed by parliament.

The prince's counsel, serjeant Reynolds, having ended his argument, withdrew; and then the

Lord Chief Justice *Parker* went on with the case of Ed. 5. The queen being in the sanctuary says, my son, as my learned counsel tell me, is my ward, because he hath no lands by descent holden by knight's service, but only by socage, and therefore to me by law the guardianship of my son does belong. Kennett's History, 490. Then the story in Ed. 3, was read, to shew Richard the second, then prince of Wales, and son of the late Black Prince, was in the custody of his mother, for he was at Lambeth with his mother, which is nothing to the purpose. But what brother Reynolds says about the statute 12 Car. 2, it is neither law nor reason, nor is, or can the prince of Wales be within that act of parliament.——As to the authority of Bracton, to be sure many things are now altered; but there is no colour to say it was not law at that time, for there are many things that have never been altered and are law now. And as to what is said as to the articles and oath quoted out of Rushworth, their being against law, that is only 'gratis dictum;' for whether it was a fair treaty or no, is not the question, for this matter was only between the king and the prince.

Baron *Price*. There is such an oath on the occasion of the said marriage as has been mentioned; but I do not know whether it has not been protested against. We must trust to collectors for these articles. The articles of marriage of Car. 1, with Henrietta Maria, are in Rymer, vol. 17, 673, 676, one of the articles much like what was mentioned before, which was, that she was to have the nurture of her children till 13 years old, these articles were agreed on in king James's time, 12 Rymer, 658. The prince's counsel seemed to agree, that marriage and education go together.

King, Chief Justice of the Common Pleas, afterwards Lord Chancellor. In the bill of precedency it fully appears, that the king's grand-children are children. In the case of children of the royal family sent beyond sea, the king's grand-children are within that law. So prayers for the king and his royal family, includes all his grand-children, though the king had no son living.

Chief Justice *Parker*. The law of God and law of nature are rather with the grandfather, and the succession cannot be altered, for that every man has a right in the royal family.

Justice *Eyre*. It is the constant custom for all the king's servants to ask the king's leave to marry. Rymer, vol 16, p. 710.

Baron *Price*. There is no judicial determination, nor any case that comes up to this. The question here is, whether this power be in the king, exclusive of the prince? If there be an ill king upon the throne, it may be very mischievous.

Chief Justice *King*. The question is, whether the king's grand-children can marry without the king's leave: for the father cannot compel them. It is impossible this question ever should come into Westminster-hall to be determined there, and therefore to say there is no legal determination, is to say nothing to the purpose. This is in its nature so great a trust that it cannot by the constitution be lodged any where but in the crown.

Chief Justice *Parker*. There is no law against any one for marrying without the father's consent; but the crime is to marry any of the royal family without the king's consent. The king's consent was always held necessary, in the case of marriage of any of the royal family, always used and never contested. Were it otherwise it would be setting up two independent powers, and is a trust too big for any subject.—The case of the princess of Orange's marriage, and that of the princess Anne of Denmark, are great instances of the power and prerogative of the crown. These matches were publicly declared by the king himself, and against the consent of the father.

Baron *Montague* quoted Stair's Institutions of the Laws of Scotland, fol. 38, which agrees with Bracton, lib. 1, cap. 9, exactly, and with Fleta, lib. 1, cap. 6.

Justice *Eyre* quoted Cowell's Inst. tit. 9, p. 14, de patria potestate; then he said that Edward the Black Prince disposed of the governance of his son Richard of Bourdeaux, afterwards Richard 2, to Simon Burleigh made his tutor at Bourdeaux. Hollingshead, 414. And in the case of the countess of Shrewsbury no offence was declared. Hob. 235. Dugdale's Baronage.

Justice *Dormer* quoted Rushworth's Collect. 1st part, 168. Rachard 974. Bacon of Government, fol. 14. And in lord Clarendon's History, baby Charles is said to be the child of the kingdom.

Then the Judges proceeded to give their opinions *seriatim*, beginning from the junior, which was baron Fortescue Aland, who had been solicitor general to the then prince of Wales, one of the first officers in his service, as follows:

Baron *Fortescue Aland*. My lords, this is a question of great importance to the whole kingdom, and I am content for the better discussing it to divide it into two parts; because it has been so done by some of my brothers, though I should have thought that if the king has the marriage of his grand-children, of necessary consequence he had their education too.

I will then consider first, whether the king has the care and approbation of the marriage of prince Frederick, and his other grand-children; and whether of right it belongs to his majesty, as king of this realm, or not.

This subject, touching the power of a grandfather, may be treated of, either as a public or a private right. It has been treated of pretty much as a private right by the two judges that differ, and by the counsel for the prince of Wales, which I think is an error, in the foun-

dation of their argument; for it ought manifestly to be treated as 'jus publicum,' such a right as our law books express it to be, 'quod ad statum reipublicæ spectat,' and that makes it the king's prerogative, and that is the king's inheritance, as king of this realm, which is too great a point to be governed by the narrow rules of private property. Now to treat this otherwise, I think, is injurious to the prince himself and all his children. Our law books say he is esteemed as one nearest to the king. So it has been determined in full parliament, in the case of the prince of Wales in H. 6th's time; and in his patent, which was made by authority of parliament in 33 H. 6, the introduction of the patent is, 'ut ipsum, qui reputatione juris censetur eadem persona nobiscum, digno preveniamus honore, &c.' so that in the eye of the law, they are to be reckoned but as one person.

It is for the same reason that an act of parliament which relates to the prince is a public law, of which every body is to take notice, because whatever concerns the prince, concerns the king, and whatever concerns the king concerns every subject in England; and therefore the act that relates to the duchy of Cornwall has been held to be a public law. Now let us see what is said in my lord Coke's 8 Rep. called the Prince's Case. Speaking of the prince, it is said, 'coruscat radiis regis patris, et censetur 'una persona cum ipso rege.' So says lord Hobart, who was the prince's chancellor, Hob. Rep. p. 226.

It is for the same reason, that it was high treason, by the common law of England (before any statute) to compass and imagine the death of the king's eldest son and heir, who is generally made prince of Wales, though now born duke of Cornwall (but is not so of a collateral heir to the crown); and this offence is called 'crimen læsæ majestatis,' a crime that hurts the majesty of the king himself. It follows then that as they are but one person in law, so in point of law they are supposed to have but one will in relation to the education, marriage, and management of the grandchildren; and the prince of Wales in point of law is supposed in every thing to concur with his majesty; which quite subverts and destroys the distinction in common persons of grandfather, father and son. Now, the king, as he is *parens patriæ*, he is also *parens nepotum*, parent of his grandchildren, as lord Coke himself expounds the king's nephew to signify his grandson, also from the Latin *nepos*, which signifies both. So in the case of a queen consort, she is the first wife in the kingdom, *quen* in the Saxon language signifying wife. And therefore by reason of excellence it was the name for the king's wife, who consider her in her private capacity, as the private wife of a common subject, she cannot sue or be sued by herself, nor can grant to or from* her husband; but then consider her in her public character and capacity, as a queen, she can sue and be sued by herself, and make grants to and from the king her husband, by her prerogative; and anciently she had a great many. Now I think in this case much may be argued from the names and appellations of the children of the royal family.

In history they are called the children of England, and all of them born princes and princesses of England, before they had any title, and all of them kings and queens in *potentia*, and may one day reign over us, Selden calls them heirs apparent of England, and they are called so in the parliament rolls. This agrees with the most early times in our kingdom, for till Henry the first's time they were distinguished from all other persons, by calling both the eldest and the rest of the king's sons Clito, and Clitones, and they had no other titles. Now *clito* is a Latin word which comes from the Greek word Κλυτὸς, which signifies *inclytus*, most noble and famous. So the word Ætheling, as Edgar Ætheling, who was not the king's son, but his great nephew, from the Saxon word Ethel, *nobilis*; which shews that all the royal family were called by the same name as the king's sons, and so sets out the admirable union of the royal family. Selden's Tit. Hon. 498, 499.

The first son of the king is called prince of England before any creation. And so it is in Scotland. Before the Union he was called prince of Scotland. And so says Mr. Selden it is in other nations. As in France, the duke of Orleans, regent of France, was called Petit Fitz de France, grandson of France, not grandson to the king. So Henrietta Maria, in the marriage articles with Charles the first, was called Fille de France, daughter of France, and not daughter of the king. Rymer 17 tom. p. 674. Selden's Titles of Honour 493, &c.

Having then made it appear, I think clearly, that all the children and grandchildren of the royal family are public persons, and princes of the nation, and the prince of Wales himself one and the same person with the king; it follows manifestly, as a just corollary and consequence, that the king, who has the executive power in him, is to have the care and command in the marriages of these children, for the good of the whole nation. It is part of that original trust, which, by the constitution of our government is reposed in the king, for the security of his people.

And as this is a prerogative vested in the crown, in the reason of the law, and nature of a monarchy; so in all ages the crown has practised, and been in possession of this right.

Now in the point of marriages there are precedents from the time of Henry 3, down to this time.

In 28 Henry 6, it was one of the Articles of Impeachment of High Treason against the duke of Suffolk for attempting only to marry his son to Margaret the daughter and heir of the duke of Somerset, who had a *right* to the

* There is considerable inaccuracy of language in this and other parts of the report. Hargrave.

crown, after the death of the king without issue, although she was not heir apparent, for there was a prince of Wales then living. Cotton 642, 643.

When he came to his trial he did not deny but it was an offence, but insisted it was not true, for that some of the lords then present knew, that he intended to marry his son to the earl of Warwick's daughter.

And this is still the stronger, because this lady was in ward to him, and so he had a private right in her marriage.

By an act of parliament of 28 Henry 8, it is made High Treason to marry any of the royal family. It is thereby enacted, that if any person presume to marry any one of the king's children lawfully born, or otherwise, or commonly reputed or taken for his children or grandchildren, without the special leave of the king, he shall be adjudged a traitor to the king and the realm: and thereby it is made high treason in the lady too, being against the king and realm; which shews plainly, the whole kingdom is concerned.

And though this act is now repealed in a crowd with other acts, to bring all treasons to the standard of 25 Edw. 3, yet it is impossible the parliament should make that high treason that was no crime at all before, and especially high treason in his own children, nay when it was lawful before to marry any person of the royal family, (if the doctrine we are taught be true) and each had a private right to marry as they pleased. And it is observable here, the parliament makes no difference whether the father be living or not, nor takes any care of that paternal right which is pretended.

In queen Mary's time, though this offence ceased to be high treason, yet it did not cease to be a crime: for in the year 1558, the king of Sweden sent a message secretly to the lady Elizabeth, the queen's half sister only, afterwards queen Elizabeth, who was then at Hatfield, to propose marriage to her; but she rejected it with warmth, for this reason, because the proposal came not to her by the queen's direction. And upon an excuse made by the king of Sweden, that he first made love as a gentleman of quality to gain her consent, and then he would, as a king, address himself to the queen in proper form; her answer was, she was to entertain no such propositions, unless the queen sent them to her. Upon this the queen sent sir Thomas Pope to the lady Elizabeth, to let her know she well approved of the answer she had made; and the lady Elizabeth further declared, she would never see the messenger more, because he had presumed to come to her without the queen's leave. Burnet's History of the Reformation, vol. 2, 361.

So that here is one foreign king and two queens of England concurring in the same sentiment; which seems strongly to argue it is the law of nations, as well as the prerogative of this crown.

The next instance I shall mention, is the case of lady Arabella, and a law book to support it, and that is the countess of Shrewsbury's case, 1 Co. 94, in the tenth year of king James the 1st. The countess of Shrewsbury was then in prison, and sent for before the council to answer to a contempt of dangerous consequence, because she refused to answer, when examined about lady Arabella's flight, for marrying Mr. Seymour, she being of the royal family: and there the attorney and solicitor-general of the king charge it as a crime, that lady Arabella being of the blood royal, had married Mr. Seymour, second son of the earl of Hertford, without the king's privity and consent. Now it appears Seymour was committed to the Tower for this offence, but escaped; and that lady Arabella was also committed, and she escaped, and was taken flying beyond sea, before she got over.

The first crime charged upon the countess, was her abetting the flight of lady Arabella her niece, and the immediate crime was her not answering in that case. Now, if marrying without the king's leave was no crime, she could never have been accused, for not answering to her abetting the flight for such marriage; so that the marrying without leave was plainly charged as a crime. They both were committed for a crime, and they both fled as for a crime, and it is admitted and taken for granted to be a crime; and her contempt in not answering, in the case of marriage in the royal family, resolved to be a crime: and this was done by all the great ministers of state, and by the chancellor, and two chief justices, Fleming and lord Coke, and chancellor of the Exchequer and duchy, and chief baron, in the 15th year of king James the first; and in the end she was fined 10,000*l.* and committed to the Tower.

The next case I shall mention is the marriage of the princess of Modena and the duke of York. There was an Address of the House of Commons to the king, to prevent this marriage. The king's Answer is very remarkable. "It is completed," says the king, "but it was with my consent and authority;" and the parliament acquiesced in that Answer.

Now this Address was absurd, if the king had no power to prevent it; so that this amounts to the judgment and opinion of the king and parliament, that this right was in the crown, exclusive of his brother. So here is the king claiming this authority, even against his own brother, and his private right, and the parliament confirming it.

Then there is the marriage of the princess Mary, daughter of the duke of York, with the prince of Orange. This match was made entirely by the king's consent, even without the knowledge of the duke her father, and against his liking and consent. The king, speaking to sir William Temple about this match, says, "If I am not deceived, the prince of Orange is the honestest man in the world, and I will trust him; therefore he shall have his wife, and you shall go and tell my brother so, and that it is a thing I am resolved on." The duke

was chagrined a little, but said, "the king shall be obeyed." See sir William Temple's Memoirs.

Here is a father acknowledging the right to be in the king, to marry his own daughter, who was only a collateral relation to the king, and married against the father's will, as every one knows.

In 1683, the match with the princess Anne, the other daughter of the duke of York, was made by the king, in the same manner. And both these marriages were established by a public declaration of his majesty to the whole nation.

And thus I beg leave to conclude the instances of marriage; but with this remark: that happy it is for this nation, that the king in the two last instances had this prerogative; for had this pretended paternal right then prevailed, the English nation had been for ever undone, and our religion destroyed, and we had never seen the many and great blessings we enjoy, and are likely to enjoy by this family sitting on the throne of Great Britain.

Thus the nation sees the trace of this happy prerogative, from Henry the 3d's time to this very day, being the compass of almost 500 years, uninterrupted, undisputed, and not one single instance to the contrary.

These instances concerning marriages of the royal family being so numerous and the light so glaring, from histories, records, public acts, statutes, and law books, the two judges, who differ, could not resist this part of the question; but have retired to the other part, that of the education, though I hope to prove that if the king has the marriage, he must have the education too.

The reason that my lord Coke gives, why the queen dowager cannot marry without the king's leave is, 'ne capitalibus inimicis regis 'maritentur.' Now the reason for the king's having the wardship of his grand-children, and education too, is stronger, viz. lest the heir of the crown himself be led aside by ill principles, and bad politics, and become himself an enemy to the constitution, and to the kingdom. Marriage is one of the main ends of the education, and that education is a principal qualification for that marriage, and therefore can never be so properly placed as with him who has the marriage. Vide 6 H. 6. 2 Inst. p. 18.

Besides, these two powers, if placed in different persons, may clash, and be repugnant; for which of them is to determine when the marriage is to begin, and to whom, and when the education is to end.

Again: if the king has the marriage, he has the appointment of the time of that marriage, and consequently he can at any time appoint it; and he that can at any time appoint the marriage, can at any time call for the custody of that person; and he that can at any time demand the person out of custody of another, has the entire power over that person.

Again: it is a true and regular argument, and conclusive to say, that whoever has the end, must have the means also, otherwise he cannot be said to have the end.

If I have the marriage of any person, I can never be sure of that, unless I have the custody and education of that person. But his majesty's prerogative, in this part of the question relating to the education, is as clearly to be made out, though not by so many instances as the case of marriage.

When prince Charles had by surprise got leave of his father to make a journey to Spain, to fetch home his mistress the infanta; revolving in his mind the hazard of that expedition and the ill influence it might have on the people, king James then declared that the prince was looked upon by his people as the son of his kingdom. Clarendon's History, p. 14. And this being related by him, carries with it his authority too, who was a very great lawyer, and chancellor of the realm.

The law books of Bracton and Fleta, which have been quoted, are the ancient law of the land extending to all cases; but this law being altered only in private cases by usage and statute, it remains law to this day, as to the royal family; because as to them this law has had no alteration by any law or statute whatever, and the usage has gone accordingly.

These law books are so strong, that there has been no way thought of to evade them, but by denying the authority of them, and calling it civil law. But I own I am not a little surprized that these books should be denied for law, when in my little experience I have known them quoted, almost in every argument where pains have been taken if any thing could be found in those books to the question in hand; and I have never known them denied for law, but when some statute or usage time out of mind has altered them. We have been told indeed that they were quoted in the case of Ship-money; but I believe that objection would not have been made, if they had been aware, that these very books were quoted on both sides the question: which destroys the objection, and shews they were approved of by all who argued in that case, both of one side and the other.

But if it be meant civil law, because it is in force in all civilized nations, I believe that is true; for I take this to be the prerogative of all kings: nor has there been any instance given in any monarchy, where the law is otherwise.

Mr. Selden says the king of England is an emperor, and this realm an empire, and so called in statutes and records without number: and if so, he will have this prerogative equal with other kings and emperors, if no statute, law, or usage says the contrary.

If the prerogative then be the law of nations, that is part of the law of the land, and will give the king a clear title to it.

See the statute of precedency which is 31 H. 8, cap. 10. It enacts, that no person presume to sit at any side of the cloth of state (except the king's children). Then when it goes on to place the great officers of state, it says,

that being barons they shall be placed on the left side of the parliament chamber, above all dukes, except the king's son, the king's brother, the king's uncle, the king's nephew, *i. e.* his grandson, or the king's brother's or sister's son.

Now this shews that the king's son, and the king's nephew or grandson, is comprehended under the term, king's children, because the latter is substituted in the place of the former.

17 Edw. 3, archbishop of Canterbury came into parliament and demanded, 'si les enfans notre sen. le roy,' born beyond sea, should inherit in England, because born out of the king's dominions, and aliens; and all the parliament agreed let them be born where they would, they should inherit. Cotton 38. It would be a jest to imagine that the king's grand-child was not within that law, and within the words 'les enfans' children: and there is the same reason in this case.

Another reason is, that the king's grandson is higher in dignity, because nearer the crown, than any other of the king's sons, except his own father, therefore ought to be esteemed equal with his own sons: and therefore if prince Frederick were here, and the king had other sons besides the prince, he would take place of all those, as Richard of Bourdeaux did, when his grandfather placed him at a public table, above all his own children who where his uncles. Speed 723.

Pursuant to this notion, grandchildren of the crown are stiled children in records.

There is 50 Edw. 3. Richard prince of Wales, his writ of summons to parliament is directed thus: 'rex Edwardus charissimo filio meo Ricardo principi Walliæ.' Cotton 143.

So is 51 Edw. 3. This prince Richard holds a parliament, by commission from his grandfather, and that runs in the same manner: 'de circumspectione et industriæ magnitudine charissimi filii nostri Ric'i principis Walliæ.' Pat. Rol. 51 Edw. 3, m. 41.

Now, I think education is of greater consequence than marriage, both to the person and to the people of England. To the person, because if he be bred either in the Popish religion, or is trained up in any other communion, though Protestant, except the church of England, he is not capable of reigning; and if bred up in arbitrary principles, inconsistent with a limited monarchy, the whole nation will then be in danger: whereas an ill chosen match will only be the most uneasy to the prince that marries, and will little affect the state, so long as the prince is steady, and adheres to the constitution.

Where is a prince to be educated, who is to be bred up a king, but in the palace and court of a king, and under his special care and influence?

The learned sir John Fortescue, called by sir Walter Raleigh the bulwark of the law of England, who was chief justice and chancellor, and also tutor to the prince of Wales in H. 6th's time, in his treatise De Laudibus Legum Angliæ, which consists of dialogues between him and the prince about his education, says, that there were two things that a prince, who is like to be heir to the crown, ought principally to be instructed in; that is, martial discipline, and the laws and constitution of England: and where are those to be had but in the king's armies, and among the great officers and ministers of the king?

The same sir John Fortescue says, speaking of the king's wards in knight's service, "the princes of the realm also holding of the king, must be well educated, since these orphans in their childhood are brought up in the king's house; therefore I cannot but greatly commend the riches and magnificence of the king's court, because it is the supreme school for the nobility of the land, whereby the realm flourishes and is preserved:" ca. 45, p. 107.

There is a patent in the 13th of Edw. 4, from the king to the bishop of Rochester, whereby he was constituted tutor to the prince, and president of the prince's council, which is very remarkable. In the preamble it says, "Howbeit every child in his youngage ought to be brought up in virtue and knowledge; yet nevertheless such persons as God has called to the pre-eminent state of princes, and to succeed their progenitors in the state of regality, ought more singularly to be informed and instructed in knowledge and virtue. We therefore, desiring our dearest son the prince, perfectly, knowingly and virtuously to be educated in his youth, and wholly trusting in the truth, wit, knowledge and virtue, and also love and affection that our reverend father hath to us and to our issue, we have committed and deputed him to teach and inform our said son, and also appointed him president of his council, giving him power to assemble all the counsellors of our said son."

Now, what I would observe from this patent is, in the first place, that it shews the great regard that is to be had to all the prince's or king's children, all who are like to succeed to the crown, that they above all others ought most singularly to be educated, and makes no distinction in the education between the first or any other of the princes of the royal blood, and the education to be perfect in knowledge and virtue.

In the next place, it shews the qualifications of such tutors, and who is to choose them.

This does not invade the paternal right, but is consistent with it. It is very possible that a grandson may obey both father and grandfather; nor can it be supposed that the father and grandfather will give contradictory commands without breach of duty in the son: but it ought to be presumed by all reasonable men, that they will both concur in material parts of the education, both for the good of their child and for the safety of the kingdom; so that in this concurs the law of God as well as man; for I believe nobody never yet doubted but a grandson was within the fifth commandment: and in obedience to that law, the patriarchs always conformed themselves. But these stick-

lers for paternal right seem to have forgot the right of the mother, which by the fifth commandment is as well established as the right of the father; and some civilians give a superiority to the mother, at least by the law of nature; and I believe that nobody ever thought that giving this power to the father excluded the right of the mother: nor can the supposition that the mother should contradict the command of the father, any more destroy the superiority of the husband in the one case, than the same groundless supposition in the son destroy the right of the father in the other case.

But to suppose for once an unreasonable thing, and what will never happen, that there should be contradictory commands, the public good must be preferred, and duty to parents must be always subject to the safety of the whole community; and the king, who is *parens patriæ*, as well as *parens nepotis*, must be obeyed; to whom there is a double obligation, by nature and by allegiance, i. e. by the law of God and law of man.

As to what was said by brother Reynolds, the prince's counsel, in relation to the statute of 12 Car. 2, cap. 24, that the prince was within that act of parliament, I deny it to be law, or any thing like it: for then it would be in the power of the prince to grant or appoint by deed or will the guardianship, custody or tuition of his son to the king of France, the Turk, or any person whatever; which would be in effect to give him a power of disposing of the crown. And by this learned doctrine the royal family might be dispersed all over Europe; and this nominee would be entitled to take the profits of all the lands of such heir to the crown, and the management of all his estate.

What was said by my brother Eyre, as to the Black Prince's disposing of his son's governance, that was a case of absolute necessity, and in the absence of the king in foreign parts, for he was then on his journey to the Holy Land. Vide Acta Regia.

Baron *Montague*. I do not know that I ever was or could be of any other opinion than for the king in this case. What gave me the first impression was the government and discipline among the patriarchs, who educated and governed all the grandchildren and great-grandchildren under them.

In the patent for the sole making of cards, the king is called 'parens patriæ, et custos regni, et pater-familias totius regni.'

I insist on Bracton and Fleta being good authorities. It is objected, indeed, this is civil law. That may be, and yet it may be and is the law of the land also; and these books take notice of several things that are law now, besides this case. These books are often quoted by the greatest judges and lawyers heretofore in England, and allowed as law. The lord chief justice Holt in the Case of Coggs and Bernard, Trin. 2 Anne, which was (a very fine case) in the King's-bench, grounded himself on Bracton in giving the opinion of the court. There is too but one family, and the prayers of the church are formed accordingly; and it would make great confusion if the prince of Wales should differ from his majesty. On great reason then is this prerogative founded; because the royal family should not be of any other religion whatsoever than that of the Church of England: and not only that, they should not be Papists. If you secure the crown, the king must have the education, and so the children of the crown will be bred up accordingly; and children do include grandchildren, no doubt. Now the law of purveyance was for all the royal family, not confined to children, but extends to grandchildren.

As to the case of Edward 5, there may be some satire in it, but no argument, so as to bind us to take notice of what was said only in the sanctuary by the queen. And as to what was said about the governance of Richard, son of the Black Prince, he was abroad then, as has been observed.

Justice *Pratt*, afterwards Chief Justice of England. The case of marriage in the royal family is an undoubted prerogative of the crown, proved by all the arguments the nature of the thing is capable of; constantly claimed, always enjoyed, and constantly submitted to; and when done and acted contrary, it was always taken to be a great offence, and some time thought high treason. And that the crown has been in possession of this prerogative, appears by the many instances out of Rymer, where it appears the crown granted proxies for that purpose very often.

The countess of Shrewsbury's Case in 12 Co. Rep. p. 94, is strong, though it did not proceed to judgment, not pretended to be said, nor was it said to be no offence. The Case of the duke of Suffolk's attempt only was thought to be high treason: from thence it may be inferred it was a very great offence. Then there is the opinion of the parliament in 28 H. 8, 18, and no instance is or can be given to the contrary. The Case of the princess of Orange is very material: the king made the match, and the duke of York, her father, was against it. But it was said the princess of Modena desired the king to prevent it: but what was the king's answer? His answer was, it is too late, it was by my consent. Here is the claim of prerogative against the opinion and consent of the father. So much as to the point of marriage.

Now as to the education of the children and grandchildren of the royal family, that is a natural and necessary consequence, that if the crown has the marriage of the royal family, it hath the care of their education. If not educated well, they cannot be married well. The king having the end should have the means; he should take care of their persons, that they should not be disposed of to the prejudice of the nation, for it cannot be undone afterwards. I do not see any answer given to that case in Rushworth, about the infanta of Spain. The son might in fact have contracted as well as

the father, though perhaps wrong; yet he does not any way contradict the power of his father. And this carries authority of parliament with it. I am of opinion this prerogative was never disputed by any of the royal family, and many have been prosecuted for the breach of it; and indeed we never can have any instances in this affair, but when there is discord in the royal family. Great inconveniences attend the contrary. How great distractions and confusions attended the differences between the Houses of York and Lancaster, when one of the family was at home, and the other abroad!

Justice *Eyre*, the prince of Wales's Chancellor. I am of a contrary opinion to my brothers that spoke last. The question is, whether the king has a legal right to dispose of the marriage and education of his grandchildren, exclusive of the father? The inconveniencies are above me to expatiate upon; but if any thing be amiss, the legislature will set it right. No authority has been produced out of any of our law books, no guardianship by the prerogative has yet been proved. The lord chief justice Coke says nothing of this prerogative: he would tell us surely when these prerogatives began, and where they ended. As to Bracton and Fleta, what is quoted out of them is not law, nor accounted so. There is no such term in our law, as *emancipatio* or *forisfamiliatio*: Dr. Cowell restrains it to the father's dying. Cowell's Inst. tit. 9. Grandchildren may be children, but that argues nothing as to wardship; but whether the practice in the crown, as to this prerogative, be otherwise, is the question. It doth not appear in any of these custodies, whether it was in the life of the father or not; and there is reason to think it must be by reason of some tenure. As to the case of the duke of Gloucester, that does not appear to us, but it was by consent. A motion was made in parliament to remove him from his preceptor, and it passed in the negative. To be sure, the public has an interest in all the king's children. The parliament sometimes interposes in the case of proclaiming peace and war, and yet the king has that right. So the king has interposed in these cases; but it cannot be inferred from thence it is a right. And give me leave to say, the crown has not always been in possession of this prerogative; for Edward the Black Prince came over and returned to Berkhamstead till the death of the grandfather, Hollingshead: and it is material that he had the governance and education of his son Richard. In the case of Edw. 5, it was not pretended, nor thought of, that the king had this right. The queen's insisting, and being in possession, is an instance against the usage. They did not insist on any law to take the duke of York out of her hands. The prince is the guardian to his son by nature and by law; and no law book makes any other distinction. Inconveniencies are not what is left to my consideration, and the usage is on our side the question.

As to marriages of the royal family, they are of a public consideration. Alliances and treaties depend upon them. The crown has always interposed in these. So in private families the grandfather has interposed sometimes.

As to the case of the duke of York's children, though those marriages might be without the actual agreement of the duke, yet it does not appear that it was against his consent; so is no instance at all: and indeed there is no instance appears that they have been disposed of against the consent of the father.

As to that case of the duke of Suffolk's being impeached of high treason, can any one say it was high treason? In the case of lady Arabella, there was no such declaration there: it was a contempt indeed, but not said so by the judges. There may be instances of high treason concerning those marriages in former ages, but there is no law case, or law book, or statute, that now declares the king has this prerogative; therefore I cannot be convinced that the king has any legal right to it.

Just. *Dormer*. I am of a contrary opinion to my brother Eyre, and that the king has a legal right to this prerogative. The king is *pater patriæ*, and his grandchildren are the children of the kingdom, and of the public. And I think the king that has the marriage has the care of education also. The duke of Norfolk at his trial confessed it was a great contempt in him, to attempt to marry the queen of Scots. So in the case of the king of Sweden, queen Elizabeth would not hear of it, nor see the person who was to propose the match to her, without the queen's leave, though *sui juris*. The father has not the disposition of his eldest son in the case of the royal family. In the case of the duke of Gloucester this right was taken for granted. As to the case of Edward 5, what the queen said there in the sanctuary, that argues nothing; and she did deliver him up at last. It is said, here is no particular case. If no particular law book in the case, yet there are many notorious facts, records and instances out of Rushworth and other books, which amount to usage with such a constancy, as makes it law, and gives this prerogative to the king.

Baron *Price*. This is a case of great consequence, so that I am in great perplexity. Not that I am afraid to give my opinion, but I cannot come into the opinion which most of my brothers have given. The question is, whether the king has this prerogative, exclusive of the prince his son? The father hath the guardianship against the grandfather. So is Roll's Abridgment, and 30 Edw. 3, and Littleton, sect. 114. Prescription to the marriage of the tenant's son against the father, was against the law of nature. Vaughan's Reports on 12 Car. 2, is strong. The father is guardian by nature, Dyer 190. It is against any law whatsoever, between subject and subject. It is very plain and clear the prince is a subject, and the prince held by tenure at first,

and that tenure is taken away by the act of 12 Car. 2. But this they say does not bind the king's prerogative. And why so? The court of wards and liveries were once his prerogative, but not so now. I wish there is nothing in the belly of this question to get something after it: they must have distinct settlements, if you set the grandson above the father: dependance creates duty. It was an Article of Impeachment, to endeavour to introduce the civil law. Bracton and Fleta are old civil law books. They may fetch out of these books, ship-money, and dispensing power: they were all fetched out of these old books. As to Rymer, he is answered by this: either the king had the right of wardship in those cases, or he interposed out of care to the royal family. The nobility themselves did sometimes maintain and portion their relations abroad. To call all bounties, rights, is very hard. As to the case of H. 6, not to marry a queen, without the king's consent, they would not make that law if they had a law before. Owen Tudor married the widow of H. 6. That was the reason of that law; and when repealed, that shewed it to be unreasonable. Nobody can shew any legal prosecution for these things. As to the articles of marriage of Car. 1, I can hardly think the king would make such an oath, I have such an opinion of his piety; for those articles are void; and it is no wonder that kings will not treat but with kings. That case of the princess of Orange was with consent, there being an agreement between the two brothers. That of the duke of Gloucester was also by agreement, for who would deny the king? All these are no more than concessions or agreements. We have a legislature which will interpose, if there be any mismanagement in the prince. I will suppose for once, the prince could be a Papist or an Atheist: the parliament would interpose in such a case. It is with great anxiety I speak in this case.

Just. *Tracy.* I differ from my brother that spoke last. This power is part of the original trust reposed in the king. We owe the blessings of this government to a marriage made against the consent of the father. Here are all sorts of proofs, from Henry the 3d's time to this very time, of marriages in the royal family: the expressions are not only *laborabimus*, but *dabimus et concessimus*. The case of the princess of Orange is a strong case. The king made that match by his own authority: no notice taken of the father, who was forced to submit to it. So that of queen Elizabeth is very strong when *sui juris*; no need to compliment in such case. That case of lady Arabella is very material. She was committed to the Tower and charged with this crime, and ran away, and escaped with hazard from this crime. If it were not criminal, there could not be all that solemn examination by two chief justices and a chief baron, and other ministers of state. The parliament also has affirmed this power. The statute 28 H. 8, is a strong argument that the parliament thought it to be unlawful, when it was once made high treason. That address in the duke of York's case to stop the marriage with the princess of Modena is very material; and, in short, I think this power in the crown has been proved very well. And this I would observe does not exclude the father's advice and counsel. Now if this be so in the case of marriages in the royal family, it is a great argument it is so as to education. Suppose the duke of York had brought up those two princesses Papists, we should have been all undone, and lost our religion. Nothing can be of greater concern than the care of education. To be deprived of education is of much more consequence than marriage: the law must then of necessity be the same in both. We cannot expect like instances in education as in marriage, because these are transacted with other persons, with princes, and of the greatest quality abroad, and beyond sea, and are to be made public; but directions about education are of a private nature, and not likely to be transmitted beyond sea. Of latter times we have them in Spanish matches, as in the articles of the prince of Wales himself. The case of the duke of Gloucester is directly in point, and which I rely upon. King William named all his servants by his own authority, without any notice to any body; so the supposed consent has no proof nor probability. The very address to the king supposes he had a right. I think there are more inconveniencies in denying this prerogative, than in any other prerogative whatsoever; and the prerogative must prevail. The stat. of 12 Car. 2, could never intend that any father had power to dispose of the royal family. They would have prevented such inconveniencies by this act, if they had imagined any such thing, or that it would be so construed.

Just. *Blencow.* I am of the same opinion with my brother that spoke last. The precedents are so strong, and the objections so weak, that I am clear of opinion the king has this prerogative: it is a prerogative so essential, that the kingdom cannot subsist without it. Instances of marriage go to full age, as well as infants. They have produced no instances on their side of the question. Marriage is nothing without education. It is a dreadful thing to separate the interest of the king and prince. Children of the crown are the greatest strength of the nation, greater than the shipping or militia: it is of infinite consequence, and the nation cannot subsist without it; and we are to advise the king according to law.

Just. *Powis.* I am of the same opinion; this prerogative clearly belongs to the kings of England. This being of such infinite consequence, it would destroy us all if it were otherwise. We always consider inconveniences, in all matters of law. And in other nations it is

said, 'Salus populi est suprema lex.' To give the children of the king education, and to breed them up for kings, is a necessary prerogative; and particularly, to see them brought up in the Protestant religion, and to reform their morals, and to learn the constitution, and how to govern. The king is the fittest and only person to breed them up with the love of their king and country; and he is the head of the family; and he is most able to do it, because he is assisted with the pockets of his subjects. As to marriages, Rymer is full: and to say they were by agreement is an odd argument; for this is an answer to every right and prerogative of the crown. There are no facts or instances on the other side, but all on this side the question; but they would have them all to be by accident or agreement. The main objection is, there are no book cases. That is impossible, as has been mentioned. As to this peculiar prerogative, how could such an affair come into Westminster-hall? Countess of Shrewsbury's case is a great authority, and she was fined 10,000*l.* Afterwards was the marriage of the duke of York to the duchess of Modena, and the princess of Orange's case; which are very strong. As to education, that is a consequence of marriage; *a fortiori*, because education is of greater concern than marriage; for the education concerns the public much more, the other private life only. Now the principal article in that match of Charles the first, was the education of those children; and by securing the education, they secured our religion from Popery, in the opinion of both courts. The case of the duke of Gloucester runs throughout as an authority, and the governor or preceptor submitted to it after a contest.

If the contrary were true, this would be a monstrous inconvenience; for then the father might devise away the heir to the crown, and they might bring him up as they please, a Mahometan, or what not; and this devise could not be altered until the heir came of age. Vaughan 180. That case of Edw. 5, was only about the sanctuary: that was the contest there and nothing more.

Chief Baron *Bury*. As to marriages, that prerogative in the crown is very clear. The crown has had it in all ages, and claimed it as their right. That of *dabimus et concessimus* in Rymer, is very strong. In all times it has been accounted a crime to marry any of the royal family without leave from the crown; and all that have had a hand in such marriages have been accounted criminal. As to education, so many instances cannot be expected, because it has seldom happened that there are grand-children in the royal family. The case of the duke of York's children is strong: the king claimed it as a right, and made the contract, and the duke gave it up. As to the authority of the House of Commons, they did not interpose as a legislature; and that affirmed the power of the crown. Though there be a law to the contrary, yet the parliament may interpose. I own I did not think that so many precedents could be found, as are here produced both as to marriage and education too.

Chief Justice *King*, afterwards Lord Chancellor. The question is, whether the care and approbation of marriages in the royal family, exclusive of the father, belong to the crown? That question doth not touch the paternal right, to be sure; but the question is, whether such marriage can be without the consent of the crown? And that is plain it cannot. As to marriages in fact in the royal family, nobody can instance any to be made these 500 years without the crown's consent. The crown in fact has done it; and where the crown has not been consulted, it has been considered as a crime. The case of lord Brandon in Henry the 8th's time, and the case of lady Arabella, are strong precedents. It was taken for granted that it was a crime and contempt, in the last case. If this had been no crime, the countess of Shrewsbury could not have been guilty of any crime whatever. The House of Commons' Address in 1673, was ridiculous, if the king had no power. As to education, so many instances of marriage is a good argument for education too. But it is objected, this invades the right of the father. Not at all so; nor is this against the law of God in any sense: for duty to parents is still subject to the public good; and there is a duty still to the mother, as well as to the father.

In the next place, this is not a guardianship by tenure; so is not within 12 Car. 2. And if there be a guardianship by prerogative, as this is, it could not be within that statute; which shews, that this could not come in question in Westminster-hall or our law books: we can learn it no otherwise than by facts or usage. You could have no instance but from Edward the Black Prince to Charles the first's time: you could have none in all these reigns. As to that case of Edw. 5, that is only of a queen who claimed it in the sanctuary, but it does not not follow that it was law. Roshworth, in all the addresses about the Palatinate, mentions the children of the Palatinate. It is reasonable to suppose the king did take care of the education of the princesses of Orange and Denmark. By order of council, the king declares he had concluded that marriage; and that shews it was done by the king's authority. In that of the duke of Gloucester, every body knows the king appointed him his tutor. The Address of the House of Commons was to remove him. Why should the king remove him if he had no power over him? So that I am clear the king has this prerogative.

Lord *Parker*, Chief Justice of England, and afterwards Lord Chancellor of Great Britain. I am of the same opinion with my lord chief justice King. The first question is as to the care and approbation of marriages in the royal family. In private families, if a daughter grows up and is marriageable, there is no law

against the daughter's marrying against the father's consent; but if against the king's consent, and she is one of the royal family, that is against the law expressly. The fifth commandment requires obedience from the grandson, as well as from the son. If the grandfather command the son any thing, the son ought to comply, else it is disobedience, and in the king only to command. Then as to the education of the royal family, that is in the king only, as his peculiar prerogative. The marriage articles of Car. 1, is a very strong case, and stronger than I could expect to find it. There being no grand-children since Edward the 3d's time, so many instances cannot be produced; nor can this happen, but where there is a disagreement in the royal family. In this case of Car. 1, it is not only an agreement, but a solemn treaty upon oath, and many years a-doing. The king did not need to enter into a treaty, if the prince had it in his own power entirely; but he says conditionally, if this devolves to me, then I will alter it. The contract was not of so much use if the grandfather lived; but if he died it would devolve to him, and then he would alter and enlarge it. And whether this contract was well or ill made, is not the question, and nothing to the purpose: there was a power to make this contract in the king; nor is it a question, whether an ill use be made of the power or not. But the prince has almost in express words said, he has not that power. The power is not in the prince till it devolves to him as king. And this was on a very solemn occasion. It is never to be supposed the king will make an ill use of any power he has by law, nor is it to be presumed the king will do wrong, because all power is committed to him by law. You may suppose any subject, though never so great, to be in the wrong, but not the king. No man that talks like a lawyer can say otherwise; and therefore I think clearly this is the king's prerogative.

Both these Opinions were afterwards drawn up in short by the ten judges, for the prerogative, and also in short by the two judges, that differed in opinion from the ten, against the prerogative, and were delivered severally under their hands to the lord chancellor, to deliver to the king. They are as follows:

To the King's Most Excellent Majesty.

"May it please your majesty;

"In humble obedience to your majesty's commands, signified to us by the right hon. lord chancellor, requiring the opinion of all your majesty's judges upon the following question, viz.

'Whether the education and the care of the 'persons of his majesty's grandchildren now 'in England, and of prince Frederick, eldest 'son of his royal highness the prince of Wales, 'when his majesty shall think fit to cause him 'to come into England, and the ordering the 'place of their abode, and appointing their governors and governesses, and other instructors, 'attendants and servants, and the care and approbation of their marriages, when grown up, 'belongs of right to his majesty, as king of 'this realm, or not?'

"We whose names are hereunto subscribed, being ten of your majesty's judges, together with the other two judges, having taken the same into consideration, and after the most diligent search that we could in this time make into acts and proceedings of parliament, treaties, public instruments, and records, histories and law books, and consideration of the power and prerogatives, which from time to time in very many instances have been exercised, and owned to belong to your majesty's royal ancestors and predecessors, with relation to the marriages and care of the persons of the branches of the royal family, and of the great concern of the whole kingdom in so important a trust; and after having, pursuant to your majesty's farther command, signified in like manner to us, heard a learned serjeant-at-law, who, by the command of his royal highness, laid before us several things relating to the question aforesaid; and after several conferences, and deliberations upon all the matters aforesaid, and what occurred to us, and the other judges thereupon; we are humbly of opinion, that the education and the care of the persons of your majesty's grandchildren now in England, and of prince Frederick, eldest son of his royal highness the prince of Wales, when your majesty shall think fit to cause him to come into England, the ordering the place of their abode, and appointing their governors and their governesses, and other instructors, attendants and servants, and the care and approbation of their marriages, when grown up, do belong of right to your majesty, as king of this realm.

"All which we most humbly submit to your royal majesty's great wisdom.

Parker,	R. Tracey,
P. King,	Robert Dormer,
T. Bury,	J. Pratt,
L. Powys,	J. Mountague,
J. Blencoe,	Fortescue A."

Mr. Baron Price's and Mr. Justice Eyre's Opinion upon the Prince's Case.

To the King's Most Excellent Majesty.

February 1, 1717.

May it please your majesty; In humble obedience to your majesty's commands, signified to your judges by the right honourable the lord chancellor, we have taken into consideration the following question, viz.

'Whether the education and care of the 'persons of your majesty's grand-children, 'now in England, and of prince Frederick, 'eldest son of his royal highness the prince of 'Wales, when your majesty shall think fit to 'cause him to come into England, and the 'ordering the place of their abode, and ap-

'pointing their governors, governesses, and 'other instructors, attendants, and servants, 'and the care and approbation of their mar-'riages, when grown up, belong of right to 'your majesty, as king of this realm, or not.'

And we are humbly of opinion, 'that the 'education and care of the persons of your 'majesty's grand-children, the ordering the 'place of their abode, and appointing their go-'vernors, governesses, and other instructors, 'attendants, and servants, belong to the prince 'their father.' But, 'that the care and ap-'probation of their marriages, when grown up, 'belong to your majesty, as king of this realm.'

This, Sir, is our humble opinion. But when we acquaint your majesty that the care and approbation of the marriages of your grand-children belong to your majesty, as king of this realm, we desire to be understood, as speaking of a care and approbation not exclusive of the prince their father. But as your majesty's care will be always employed for the good of the royal family, and the welfare of your people; so it is a duty incumbent upon every member of the royal family to apply to your majesty, and receive your royal approbation upon every occasion of this kind; for we find that all negociations of marriages in the royal family have been carried on by the intervention of the crown, and such marriages as have been contracted without the royal consent and approbation, have been thought contempts of the regal authority: but we find no instance where a marriage has been treated by the crown, for any person of the royal family, without the consent of the father; and we beg leave to assure your majesty, that there is no one expression in any of our law-books that warrants any such assertion.

As to the other part of the question, in answer to which we cannot concur with the other judges; it is our duty humbly to lay before your majesty, that in our opinion the father hath in all cases a right to the custody and education of his children, and this we take to be clear from the general rule of law.

This right of the father is said in our books, to be founded *jure naturæ*, and to be annexed by nature to the person of the father. (7 Co. 13.) In case of younger children, it never was disputed; and in regard to the eldest son, or daughter and heir, to whom lands descended from a collateral ancestor, the right of the father obtained even against the lord, [30 E. 3, 17.] though his seigneural right to the wardship of his tenant during the minority prevailed against the grandfather, and all other ancestors lineal and collateral. Littleton, Coke, and Vaughan, all agree that none can have the custody of a man's son and heir apparent from the father; and in the common case of a tenure in socage, even the mother has the right of guardianship, after the death of the father, preferable to the grandfather. From hence we take it to be the general rule of law, that the guardianship of the children is a right common to every subject of this kingdom, who is a father, without exception. [Littleton, § 114. 39 H. 6; 55 Co. Litt. 84, 84, b. 3 Co. 38; Vaugh. 180; Litt. §. 123.]

Upon the best search we have been able to make, we can find but two books written by English lawyers, that can possibly induce a contrary opinion (Bracton and Fleta.) Bracton treating *de patria potestate* says, 'Qui ex filio tuo et ejus uxore nascitur, i. e. nepos tuus et neptis, æque in tua potestate sunt, et pronepos et proneptis, et deinceps cæteri;' and, 'in potestate patrum sunt filii qui nascuntur in justo et legitimo matrimonio, idem in nepotibus et pronepotibus, quantum ad avos et proavos paternos;' which Fleta has also said in almost the same words, and which both have taken from Justinian's Institutes. [Bracton, l. 1, c. 9. Ibid. §. 4. Fleta, l. 1, c. 6. Justin. l. 1, tit. 9, §. 3.] This shews it to have been a part of the Roman law; but it neither is, nor, as we conceive, ever was, a part of the law of England. It is well known that Bracton and Fleta wrote their several treatises upon the plan of the imperial laws; and it is as well known, that those laws never obtained, here, through the general aversion this nation (always zealous of its liberties) had towards them; and accordingly, wherever these writers differ from our year-books, and authentic reports, they are not allowed to be of authority. And as to this part of the Roman law in particular, which relates to the *patria potestas*, it is acknowledged by all, even by Justinian himself, that it was so peculiar to the Romans, that it never obtained among any other people whatsoever. 'Jus autem potestatis, quod in liberos habemus, proprium est civium Romanorum; nulli enim sunt homines, qui talem in liberos habeant potestatem, qualem nos habemus.' [Justin. l. 1, tit. 9, §. 2.]

But to give a more particular answer to these passages, which are the only ones that have the least appearance of law, it is evident they cannot be made to affect the case of the royal family, by any other construction than what will equally affect every other family in England. But that from these passages nothing can be concluded, to determine the extent of the *patria potestas* in any family here, is clear from the reason, on which the power of the grandfather among the Romans is founded.

Now the reason of the Roman law, why children should not be in the power of the father, but of the grandfather exclusive of the father, was, because the father himself was not *sui juris*, and in his power, but in 'patris familias sui manet potestate, mancipioq;' which are the words of the Laws of the XII Tables; and it was manifestly absurd, that he should have others in his power, who was not in his own.

This servile condition of the son to the father, which had ordinarily no end, till the father himself was pleased by emancipation to put an end to it, being the sole foundation of the grandfather's right to the grandchildren, as well as to every thing else the father was possessed of; when this state of the father ceased, the power of the grandfather necessarily ceased with it:

and so it is declared in Justinian's Institutes, that if the son was emancipated, and set free from the power of his father, the children begotten after such emancipation are not in the power of the grandfather, but of the father.

'Quod si post emancipationem conceptus fuerit, patris sui emancipati potestati subjicitur' [Justin. *l.* 1, tit. 12, §. 9.]

But not to insist that by the laws of England no father has such a power over his children, even in their minority, as the Roman law gave; it is undeniable, that with us marriage hath the nature of a true and proper emancipation of the person of the son; and by consequence, even upon the grounds of the Roman law, the grandfather with us can have no right to the children of the son, but the father only. If therefore nothing otherwise appears to distinguish the case of the royal family, there can be no foundation upon which any prerogative can be established in the instance now in question; and we humbly apprehend that the only precedents which can be alleged to support such a prerogative, when considered, will not be found sufficient.

The first, in the 22 H. 3, entitled in 1 Rymer, [378.] 'De Alianora filia Galfridi,' &c. is only a declaration under the great seal, that William Talbot had surrendered to king Henry 3, the castle of Gloucester, 'Et Alianorum consanguineam suam sanamet incolumem.' What can be inferred from hence is hard to determine, any farther than that this Alianor was in ward to the crown, and had been committed to the care of Talbot, who had surrendered her and her estate safe again to the king.

The other precedent, which is in 1 H. 4, is a grant of an annual sum of 500 marks to the prince of Wales for the expence of the maintenance of Edmund earl of March, and his brother, so long as they should remain in the prince's custody, to whom they had been committed the February before. [8 Rymer 608.] As to this it appears by the history and records of those times, [Sandford's Gen. Hist. 226, 227,] that Roger de Mortimer their father was killed in Ireland 22 R. 2, and that their mother soon after married sir Edward Charlton lord Powis, and died 7 Hen. 4, so that the eldest son was then in ward to the crown, by reason of his lands held of the crown, as were his lordships of Wigmore and Clare, *inter alia*; and his brother Roger was then an infant of very tender age, and under the care of the king, as next relation: and it appears that he died very young; in which latter case, we humbly conceive, that the care which the king was pleased to take of an infant and orphan so nearly related to him, will not be a precedent to establish a power in the crown to dispose of the custody of a child while the father is living.

If any stress can be laid upon printed history, the case of Richard, son to Edward the Black Prince, will be an instance against this power supposed to be lodged by law in the grandfather. He being a minor, lived with his father as part of his family, and his father appointed his governor, of which we have this relation in Hollingshead: [3 Hol. 414,] that sir Simon Burlie, kinsman to Dr. Burlie, one of the instructors of Edward the Black Prince, having been admitted among other young gentlemen to be school-fellow with the prince, he grew in such credit and favour with him, that afterwards, when his son Richard of Bourdeaux was born, the prince, for special trust and confidence which he had in the said Simon Burlie, committed the governance and education of his son Richard to him; and after the death of the Black Prince, it appears by two very remarkable instances in our history, that Richard continued with his mother till the death of his grandfather king Edward the 3rd. [2 Brady, 307. 1 Kennet, 33. Stow, 274. 3 Tyrrel, 771. Walsingham, 199.]

The younger children of Edward 4 lived with their mother, whose wardship she declared she claimed by the advice of learned counsel, according to the relation given us by sir Thomas More, afterwards lord chancellor of England, in his History of those Times; nor was it then pretended, that the king had any right to their education, or the care of their persons; and although the queen was prevailed upon to part with her son Richard duke of York, her daughters remained in her custody till she herself was contented to send them to court. [Stow, 445. 1 Kennet, 490.]

As to the education of their late majesties queen Mary and queen Anne during their minorities, it does not appear to us, that their uncle king Charles the second appointed their governesses and servants, or any one person that attended them; and we are not enough acquainted with the circumstances of the duke of Gloucester's case to make the proper remarks, but it seems to have been by agreement with the king: and we humbly conceive, that the motion in parliament, December 13, 1699, for an address to the king to remove the then bishop of Salisbury, [Burnet] from being his preceptor, can be of no weight in this matter, since it passed in the negative.

It is possible that something may be inferred in favour of this prerogative, from that article of the treaty, [1 Rushw. 86,] said to be made by king James the first concerning the match with Spain, which related to the nurture and education of the children of that marriage. It is not to the present question to consider, whether there ever was such a treaty as is related by Rushworth or not. It is certain, that it is not to be found upon record, the proper evidence of all public treaties. The articles of the treaty are said in Rushworth [1 Rushw. 85,] to be stiled by the cardinals, Propositions for the right augmentation and weal of the Roman Catholic religion. And, in truth, almost every article is so derogatory to the supremacy of the crown, and the statutes made for the establishment and security of the Church of England, that it could have carried no sort of authority with it in point of law, even though it had appeared in a regular manner, under the great

seal, and not from the reports of historians only. Nor can the oath said to be taken by prince Charles, while in Spain, to intercede with his father, that the ten years of the education of the children which should be born of this marriage with the infanta, accorded in one of the articles of this treaty, might be lengthened to the term of twelve years, as the prince desired, be looked upon as a precedent to determine what the law of England is. The right to the care and education of the children of that marriage, had it taken effect, was not then in dispute: and had it been so, nothing can be concluded from the voluntary engagement of the prince, in favour of a marriage so much desired by himself, as well as by his father, wherein the question of this right was never the subject of debate.

There was indeed an article in the treaty with France, [17 Rymer, 676,] upon the marriage of king Charles the first with princess Henrietta Maria, whereby it was agreed that the children of that marriage should be brought up with their mother till their age of 13; but it is evident, that treaty was made with king Charles the first, after his accession to the crown, and not with king James his father. King James, it is true, sent over the earls of Carlisle and Holland to treat of that match; but the treaty was not concluded till after his death, and then by powers from king Charles the first, whose stipulations for the education of his own children could need no assistance from his prerogative. [17 Rymer, 679.]

Thus have we humbly laid before your majesty, what we have to offer in relation to the books and precedents that have fallen under our consideration upon this head, which we cannot think sufficient to infer a prerogative in your majesty, as king of this realm, in the care and education of your majesty's grandchildren, during the life, and without the consent of their father; a prerogative, as we humbly apprehend, hitherto unknown to the laws of England.

All which is most humbly submitted to your majesty's great wisdom. Ro. Price,
R. Eyre.

These Opinions of the Judges his majesty was pleased some time after to communicate to his privy council in manner following:

At the Court at Kensington, the 1st of July, 1718. Present, the King's most Excellent Majesty in Council.

His majesty was this day pleased to communicate to the lords of his most honourable privy council, that his royal pleasure had some time since been signified to his judges, by the late lord chancellor Cowper, that they should give their opinion upon the question just before mentioned.

And that his majesty, having afterwards been informed that some of the counsel of his royal highness the prince of Wales expressed a desire to lay before the judges something relating to the question aforesaid, had further signified his royal pleasure to his judges, that any one single person, that should apply to the said judges for that purpose, should be admitted to lay before them what such person should have to offer from his royal highness. And that the judges had returned their answer to the said question; which answer his majesty was pleased to order to be read this day in council; and the same was read, whereby it appeared that the said judges had taken the said question into consideration, and had heard a learned serjeant at law, who by command of his royal highness had laid before them several things relating to the question aforesaid; and that ten of the judges, that is to say, Thomas lord Parker, now lord high chancellor of Great Britain, then lord chief justice of the court of King's-bench; sir John Pratt, knight, now lord chief justice of the said court of King's-bench, then one of the justices of the said court; sir Peter King, knight, lord chief justice of the court of Common Pleas; sir Thomas Bury, knight, lord chief baron of the court of Exchequer; sir Littleton Powys, knight, one other of the justices of the court of King's-bench; sir John Blencowe, knight, Robert Tracey and Robert Dormer, esquires, justices of the said court of Common Pleas; sir James Mountague, knight, one of the barons of the court of Exchequer; and sir John Fortescue Aland, knight, now one of the justices of the court of King's-bench, and then one of the barons of the court of Exchequer, were of opinion:

'That the education and care of the persons 'of his majesty's grandchildren now in Eng- 'land, and of prince Frederic, eldest son of his 'royal highness the prince of Wales, when his 'majesty shall think fit to cause him to come 'to England, and the ordering the place of 'their abode, and appointing their governors 'and governesses, and other instructors, atten- 'dants and servants, and the care and approba- 'tion of their marriages when grown up, be- 'long of right to his majesty, as king of this 'realm.'

And that Robert Price, esquire, one of the barons of the court of Exchequer, and sir Robert Eyre, knight, then one of the justices of the aforesaid court of King's-bench, and chancellor of his royal highness the prince of Wales, were of opinion:

'That the education and care of the persons 'of his majesty's grandchildren, the ordering 'the place of their abode, and appointing their 'governors and governesses, and other instruc- 'tors, attendants and servants, belong to the 'prince their father; but that the care and ap- 'probation of their marriages, when grown up, 'belong to his majesty, as king of this realm.' —Adding, 'That in what concerned the mar- 'riage, they desired to be understood as speak- 'ing of a care and approbation not exclusive of 'the prince their father.'

457. The Trials of Major STEDE BONNET, and Thirty-three others, at the Court of Vice-Admiralty, at Charles-Town, in South-Carolina, for Piracy:* 5 GEORGE I. A. D. 1718.

Tuesday, Oct. 28, 1718.

The Court met according to appointment.

PRESENT—Nicholas Trott, esq. Judge of the Vice-Admiralty, and Chief-Justice of the said Province of South-Carolina.

ASSISTANT JUDGES—George Logan, esq. Alexander Parris, esq. Philip Dawes, esq. Geo. Chicken, esq. Benjamin de la Conseillere, esq. Samuel Dean, esq. Edward Brailsford, gent. John Croft, gent. Capt. Arthur Loan, Capt. John Watkinson.

THE King's Commission to Nicholas Trott, esq. Judge of the Court of Vice-Admiralty, and the Commission in the name of the lord Palatine, and the rest of the lords proprietors, and testified by the Hon. Robert Johnson, esq. governor, and the rest of the lords deputies, for holding the Court of Admiralty Sessions, was openly read.

Then the grand-jury was called, and twenty-three of them were sworn; the names of which are as followeth:

Michael Brewton, foreman; Robert Tradd, Andrew Allen, Peter Manigault, John Beauchamp, John Bullock, Thomas Barton, Anthony Matthews, Alexander Kinlock, Henry Perrineau, Paul Douxsaint, John Breton, John Bee, Daniel Gale, Thomas Loyde, Laurence Dennis, Elias Foisin, John Shepherd, John Simmons, George Peterson, Solomon Legare, Abraham Lesuir, and John Caywood.

Then the Judge of the Vice-Admiralty proceeded to give his Charge to the Grand Jury, as followeth:

Gentlemen; We are here assembled to hold this Court of Admiralty-Sessions; and the duty of my office requires me to give in charge to you the things that you are to enquire of and to present.

In a former Admiralty-Charge, by way of preface or introduction to the particular crime of piracy, which will again now be brought before you;

I then shewed you, first, That the sea was given by God for the use of men, and is subject to dominion and property, as well as the land.

And then I particularly remarked to you, the sovereignty of the kings of England over the British seas.

I then proceeded, secondly, to shew you, That as commerce and navigation could not be managed without laws; so there have been always particular laws for the better ordering and regulating marine affairs; with an historical account of those laws, and their origin.

Of all those matters I then spake largely and fully; and shall not now trouble you with any farther repetition of them.

But I shall now proceed, in the third place, to shew you, That there have been particular courts and judges appointed, to whose jurisdiction maritime causes do belong; and that in matters both civil and criminal.

And then I shall in particular shew you the constitution and jurisdiction of this Court of Admiralty Sessions.

And shall mention the crimes cognizable therein; and shall particularly enlarge upon the crime of piracy, that will now be brought before you.

Time will not permit me to speak of the several sorts of magistrates, to whose jurisdiction maritime affairs do belong, in the transmarine or foreign parts of the world: therefore I shall confine myself under this head, only to speak of the laws of England; by which the general jurisdiction in marine affairs is by the king as supreme, as well by sea as land, committed to the Lord High Admiral; who, besides his power over the navy, and the government over the seamen, hath a jurisdiction *(a)* civil and criminal in marine affairs, which are decided by his maritime judges in the Court of Admiralty, the chief of which is known by the stile of "Supremæ Curiæ Admiralitatis Angliæ Judex:" within whose cognizance, in right of the

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* For Piracy, see in this Collection the Trials of Golding and others, vol. 12, p. 1269; of Green and others, vol. 14, p. 1199. Leach's Hawkins's Pl. Cr. book 1, c. 37.

"When states," says Mr. East, (Pleas of the Crown, chap. 17, § 4), "are in open hostilities, the plundering of an enemy is not piracy, but lawful capture. And before the stat. 11 & 12 Wm. 3, c. 7, which was levelled against commissions granted by James 2, after his abdication, none were deemed pirates who acted under the commission of any foreign power. But that statute enacts, that if any of his majesty's natural-born subjects or denizens of this kingdom, shall commit any piracy or robbery, or any act of hostility against others his majesty's subjects, upon the sea, under colour of any commission from any foreign prince or state, or pretence of authority from any person whatsoever; every such offender shall be deemed, adjudged, and taken to be a pirate, felon, and robber, and being duly convicted thereof, according to this Act, or that of Hen. 8, shall suffer death, and loss of lands, goods, and chattels, as pirates, &c. upon the seas, ought to suffer."

(a) See Godolph. Admir. Juris. c. 4, p. 41.

jurisdiction of the Admiralty by the sea laws, and the laws and customs of the Admiralty of England, are comprized all matters properly maritime, and pertaining to navigation.

As to the antiquity of the office of Lord Admiral, and the Court of the *(b)* Admiralty, it is sufficient to remark, that the thing itself that signified that office, now known to us by the stile of Lord High Admiral, and the jurisdiction thereof, hath been in the kingdom of England time out of mind.

The learned antiquary sir Henry Spelman, in his *(c)* Glossarium, and out of him *(d)* Dr. Godolphin gives us the Catalogues of the Admirals from the reign of king Henry 3. Not but that the office of Admiral is far more ancient: for the same learned antiquary saith, that he hath not in that Catalogue inserted Marthusius, that Princeps Nautarum, in king Edgar's time; nor those Tetrarchs of his navy; nor of those other commanders in chief in sea affairs, constituted by his successors kings of England; but of such only as in the ordinary way have been dignified with the said office.

The lord *(e)* Coke, in the first part of his Institutes, in honour of the Admiralty of England, saith, "That the jurisdiction of the Lord Admiral is very ancient, and long before the reign of Edward 3, as some have supposed, as may appear by the laws of Oleron, (so called, for that they were made by king Richard 1, when he was there) that there had been an Admiral time out of mind, and by many other ancient records in the reigns of Henry 3, Edward 1, and Edward 2, is most manifest."

But the learned Selden *(f)* in his notes upon Fortescue, tells us, That in an ancient manuscript "De l'Office de l'Admiralty," translated into Latin by one Thomas Rowghton, calling it "De Officio Admiralitatis," there are constitutions often mentioned touching the Admiralty of Henry 1, Richard 1, king John, and Edward 1, which shews the great antiquity of that Court.

And as to the jurisdiction of the Court of Admiralty, not to enter upon the disputes between the civilians and the common lawyers concerning the same; I shall now only observe to you, that it is allowed even by those statutes that were made purposely to restrain the jurisdiction of the Court of Admiralty, that that Court ought to have cognizance of all things done upon the main sea, *(g)* or coasts of the sea. And of the death *(h)* of a man, and of maihem done in great ships, being and hovering in the main stream of great rivers, only beneath the bridge of the same rivers nigh the sea.

And by the preamble to the statute of the 28 H. 8, it is declared, *(i)* that traitors, pirates, thieves, robbers, murderers, and confederates upon the sea, were tried before the Admiral, or his Lieutenant or Commissary, after the course of the civil law.

But as appears further by the said preamble that it was found inconvenient to try those offenders before the admiral;

Therefore by the said statute this Court of Admiralty Sessions was appointed, whereby such offenders were to be tried according to the course of the common law, as if their offences were committed on land.

And now I shall proceed to speak of the crimes cognizable in this Court. And particularly I shall enlarge upon the crime of piracy that will come before you.

The crimes cognizable in this Court, and within the jurisdiction of the same, by the express words of the statute *(k)* are all treasons, felonies, robberies, murders, and confederacies, committed in or upon the sea, or in any other haven, river, creek, or place where the admiral or admirals have or pretend to have power, authority, or jurisdiction.

There being only one of those crimes, viz. robbery or piracy, that will come before you, I shall omit the rest, and only speak to that: wherein I shall shew you the nature of the offence, and the heinousness thereof.

Now, as this is an offence that is destructive of all trade and commerce between nation and nation; so it is the interest of all sovereign princes to punish and suppress the same.

And the king of England *(l)* hath not only an empire and sovereignty over the British sea, but also an undoubted jurisdiction and power, in concurrency with other princes and states, for the punishment of all piracies and robberies at sea, in the most remote parts of the world.

Now as to the nature of the offence: piracy is a robbery committed upon the sea, and a pirate is a sea thief.

Indeed, the word 'pirata' as it derived from πειράω, 'transire, à transeundo mare,' was anciently taken in a good and honourable *(m)*

(b) Godolph. p. 24.

(c) Spelmanni Glossarium in voce Admiral, p. 14, usque ad p. 17.

(d) P. 215 to p. 230. And Justice's Laws of the Sea, p. 284 to p. 289.

(e) Coke on Littl. l. 3, c. 7, § 439, f. 260, b.

(f) Selden's Notes on Fortescue, p. 35, 36.

(g) 13 R. 2, c. 5, p. 173.

(h) See the Stat. 15 R. 2, c. 3, p. 180. 2 H. 4, c. 11, p. 193. 2 H. 5, c. 6, sect. 2, p. 214. And see 13 Car. 2, c. 9. Art. 36, p. 1174.

(i) 28 H. 8, c. 15, p. 486.

(k) No. 3.

(l) See sir Charles Hedges's charge at the Trial of Dawson, &c.

(m) "Pirata pro milite maritimo, ἀπὸ τοῦ πειρᾶν, *i. e.* transire vel pervagari. Asser. Menevens. Epist. in vit. Ælfredi.—Rex Ælfredus jussit cymbas et galeas, *i. e.* longas naves, fabricari per regnum, ut navali prælio hostibus adventantibus obviaret. Impositisque piratis in illis, vias maris custodiendas commisit. Hoc sensu archipiratam dici censeo pro nautarum præfecto, vel quem hodie admirallum nuncupamus. In quadam enim Chartâ Regis Edgari Cœnobio Glastoniensi confectâ, An. Dom. 971, testium unus, Martusin archipiratam se

Then the Court adjourned till the afternoon.

The Court met according to adjournment.

And the Grand Jury being called over, a Bill of Indictment was given to them against Stede Bonnet, Robert Tucker, Edward Robinson, Neal Paterson, William Scot, and Job Bayley, for feloniously and piratically taking the sloop Francis with her goods, capt. Peter Manwareing, commander.

Then the Court adjourned till Wednesday morning.

Wednesday, Oct. 29, 1718.

The Court met according to adjournment.

The Grand Jury being called over, a Bill of Indictment was delivered to them against David Hariot, John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers alias Evis, Samuel Booth, William Hewet, and John Levit, for feloniously and piratically taking the said sloop Francis, with her goods, capt. Peter Manwareing, commander.

And another Bill of Indictment against William Eddy alias Wedy, Alexander Annand, George Ross, George Dunkin, Thomas Nichols, John Ridge, Matthew King, Daniel Perry, and Henry Virgin, for the same fact, in taking capt. Manwareing.

And another against James Robbins alias Rattle, James Mullet alias Millet, Thomas Price, John Lopez, Zachariah Long, and James Wilson, for the same fact.

Then the Grand Jury returned, finding Billa Vera on the Bill of Indictment against Stede Bonnet alias Edwards alias Thomas, Robert Tucker, Edward Robinson, Neal Paterson, William Scot, and Job Bayley, for feloniously and piratically taking the said sloop Francis, with her goods, Peter Manwareing commander.

On the Bill of Indictment against David Hariot, John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers alias Evis, Samuel Booth, William Hewet, and John Levit, for the same fact, in taking capt. Manwareing.

On the Bill of Indictment against William Eddy alias Wedy, Alexander Annand, George Ross, George Dunkin, Thomas Nichols, John Ridge, Matthew King, Daniel Perry, and Henry Virgin.

As also a Bill of Indictment against James Robbins alias Rattle, James Mullet alias Millet, Thomas Price, John Lopez, Zachariah Long, and James Wilson, both for the same fact.

Then the Court proceeded to arraign Robert Tucker, Edward Robinson, Neal Paterson, William Scot, and Job Bayley, upon the Indictment for feloniously and piratically taking the sloop Francis, Peter Manwareing commander.

Who all pleaded Not Guilty.

The Court then delivered another Bill of Indictment to the Grand Jury against Stede Bonnet alias Edwards alias Thomas, David Hariot, Edward Robinson, Robert Tucker, William Scot, Job Bayley, Neal Paterson, John William Smith, Thomas Carman, and John Thomas, for feloniously and piratically taking the sloop Fortune, with her goods, capt. Thomas Read commander.

Another Bill of Indictment against John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins alias Rattle, James Mullet alias Millet, Thomas Price, James Wilson, John Lopez, and Zachariah Long, for the same fact, in taking capt. Read.

And another against William Morrison, William Livers alias Evis, Samuel Booth, William Hewet, John Levit, William Eddy alias Wedy, Alexander Annand, George Ross, George Dunkin, and Thomas Nichols, for the same fact.

Then the Court proceeded to arraign John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers alias Evis, Samuel Booth, William Hewet, and John Levit, for feloniously and piratically taking the sloop Francis, with her goods, capt. Peter Manwareing, commander.

Who all pleaded Not Guilty.

Then the Court adjourned till Thursday morning.

Thursday, Oct. 30, 1718.

The Court met according to adjournment.

Then the Grand Jury returned, finding Billa Vera on the Bill of Indictment against Stede Bonnet alias Edwards alias Thomas, David Hariot, Edward Robinson, Robert Tucker, William Scot, Job Bayley, Neal Paterson, John William Smith, Thomas Carman, and John Thomas, for taking the said sloop Fortune, with her goods, capt. Thomas Read commander.

On the Bill of Indictment against John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins alias Rattle, James Mullet alias Millet, Thomas Price, James Wilson, John Lopez, and Zachariah Long, for the same fact, in taking capt. Read.

And on the Bill of Indictment against William Morrison, William Livers alias Evis, Samuel Booth, William Hewet, John Levit, William Eddy alias Wedy, Alexander Annand, George Ross, George Dunkin, and Thomas Nichols, for the same fact.

Then the Court proceeded to the Trial of Robert Tucker, Edward Robinson, Neal Paterson, William Scot, and Job Bayley.

Clerk. Set Robert Tucker, Edward Robinson, Neal Paterson, William Scot, and Job Bayley to the bar.

Then the Petit Jury were called over.

Clerk. You the prisoners at the bar: these good men that were called last, and have here appeared, are those that shall pass between our sovereign lord the king and you, upon your

lives and your deaths; therefore, if you or any of you will challenge them or any of them as they come to the book to be sworn, and before they be sworn, you may, and you shall be heard.

Then the Petit Jury were sworn, whose names were as followeth: Timothy Bellamy, foreman, George Ducket, John Rivers, William Sheriffe, Benjamin Dennis, Hugh Durfey, Thomas Chambers, Daniel Townshend, John Lee, Thomas Bee, John Barton, Richard Fairchild.

Cryer. O Yes, if any man can inform the Judge of this Vice Admiralty for the Vice Admiralty jurisdiction of this province, and the rest of the Commissioners of this Admiralty Sessions, or the Attorney General of this inquest to be taken between our sovereign lord the king, and the prisoners at the bar, or any of them, of any treason, piracy, murder, or other felony committed or done by the prisoners at the bar, or any of them, let them come forth, and they shall be heard; the prisoners now stand at the bar upon their deliverance.

Then the prisoners were severally bid to hold up their hands (which they did.)

Then the Clerk charged the Jury with them thus:

Clerk. You Gentlemen of the Jury that are sworn, look upon the prisoners, and hearken to their Charge.

Then the Indictment was read, as followeth:

"The jurors for our sovereign lord the king do upon their oath present, That Stede Bonnet alias Edwards alias Thomas, late of Barbadoes, mariner; Robert Tucker, late of the island of Jamaica, mariner; Edward Robinson, late of Newcastle upon Tine, mariner; Neal Paterson, late of Aberdeen, mariner; Job Bailey alias Beely, late of London, mariner; William Scot, late of Aberdeen, mariner; the 2d day of August in the 5th year of the reign of our sovereign lord George, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, &c. by force, &c. upon the high sea, in a certain place called Cape James alias Cape Inlopen, about 2 miles distant from the shore, in the latitude of 39°, or thereabouts, and within the jurisdiction of the Court of Vice Admiralty of South Carolina, did piratically and feloniously set upon, break, board, and enter a certain merchant-sloop, called the Francis, Peter Manwareing commander, then being a sloop of certain persons (to the jurors aforesaid unknown) and then and there piratically and feloniously did make an assault, in and upon the said Peter Manwareing, and other his mariners, (whose names to the jurors aforesaid are unknown) in the same sloop, against the peace of God, and of our said now sovereign lord the king, then and there being, piratically and feloniously did put the aforesaid Peter Manwareing, and others his mariners of the same sloop, in the sloop aforesaid then being, in corporal fear of their lives, then and there in the sloop aforesaid, upon the high sea, in the place aforesaid, called Cape James alias Cape Inlopen, about 2 miles distant from the shore, in the latitude of 39° or thereabouts, as aforesaid; and within the jurisdiction aforesaid, piratically and feloniously did steal, take and carry away the said merchant-sloop, called the Francis, and also 26 hogsheads, 3 tierces, and 3 barrels of rum, of the value of 263*l.* 6*s.* 8*d.*, current money of the island of Barbadoes; 25 hogsheads of molosses, of the value of 138*l.* 13*s.* 8*d.*, current money of the island of Antegoa; 3 barrels and 3 tierces of sugar, of the value of 33*l.*, like current money of Antegoa; 2 pockets of cotton, of the value of 50*s.*, like current money of Antegoa; and about 60 weight of indigo, of the value of 9*l.*, like current money of Antegoa aforesaid; 1 new cable, of the value of 50*l.*, sterling money of Great Britain; 19 French or Spanish pistoles; 2 half moidores of gold; 14 French crowns; 1 pair of silver buckles, value 10*s.*, sterling money of Great Britain; and 1 silver watch, of the value of 7*l.*, sterling money of Great Britain aforesaid; the goods and chattels of certain persons (to the jurors aforesaid unknown) then and there, upon the high sea aforesaid, in the aforesaid place, called Cape James alias Cape Inlopen, about 2 miles distant from the shore, in the latitude of 39° or thereabouts, as aforesaid, and within the jurisdiction aforesaid, being found in the aforesaid sloop, in the custody and possession of the said Peter Manwareing, and others his mariners of the said sloop, and from their custody and possession then and there, upon the high sea aforesaid, in the place aforesaid, called Cape James alias Cape Inlopen, as aforesaid, and within the jurisdiction aforesaid, against the peace of our now sovereign lord the king, his crown and dignity."

Clerk. Upon this Indictment they have been arraigned: Upon their arraignment they have pleaded Not Guilty; and for their Trial have put themselves upon God and their country, which country you are. Your Charge is to enquire whether they, or any of them, are Guilty of the felony and piracy of which they stand indicted, in manner and form as they stand indicted, or Not Guilty. If you find them, or any of them, Guilty, you shall then enquire what goods or chattels, lands or tenements, they, or any of them, had at the time of the felony or piracy committed, or at any time since. But if you find them Not Guilty, &c. And hear your evidence.

Then *Richard Allen*, esq. Attorney General, spake as followeth:

May it please your honours, and you gentlemen of the jury; The nature of the crime, piracy, for which the prisoners at the bar are now to be tried, and the statute of the 28th of Henry the 8th, intitled, 'For Pirates,' has been fully and learnedly laid open and explained by the judge in his Charge to the grand jury, (at

breaking, and entry of one, if the rest were present and consenting, is the boarding, breaking, and entry of all the rest.

We shall prove, that all the prisoners at the bar were at the taking of Manwareing's sloop, that they all bore arms, and that they all shared a few days before they came to Cape Fear: and if so, we doubt not but you will find them guilty, and discharge that duty the country expects from you.

Mr. *Thomas Hepworth.* May it please your honours, and you gentlemen of the jury, the crime the prisoners now stand charged with, is piracy, which is the worst sort of robbery, both in its nature and its effects, since it disturbs the commerce and friendship betwixt different nations, and if left unpunished, involves them in war and blood. What calamities and ruin they carry along with them, no person can be a stranger to; so that those that bring not such criminals to judgment, when it lies in their power, and is their duty to do so, are answerable in a great measure, before God and man, for all the fatal consequences of such acquittals, which bring a scandal on the public justice, and are often attended with public calamities.

It is not therefore, gentlemen, to be supposed that wise or honest men, (and there is none who would willingly be thought otherwise) who love their country, and wish its peace and prosperity, would be guilty in that kind.

What has been said by the king's attorney or myself upon this unexpected occasion, I hope will not be looked upon as intended to influence any of the jury. I am sure it is far from being so designed; religion, conscience, honour, common honesty, humanity, and all laws forbid such methods. There is no doubt but the judges as well as the jurymen best discharge their duty when they proceed without favour or affection, hatred or ill-will, or any partial respect whatsoever: Malice and favour (two great enemies to justice) are to be excluded all courts of judicature as too partial.

Every man ought to be extremely tender of such a person as he has reason to believe is innocent; but it should be considered likewise, on the other side, that he who brings a notorious pirate or common malefactor to justice, contributes to the safety and preservation of the lives of many, both bad and good; of the good, by means of the assurance of protection; and of the bad too, by the terror of justice. It was upon this consideration that the Roman emperors, in their edicts, made this piece of service for the public good as meritorious as any act of piety or religious worship.

Our own laws demonstrate how much our legislators, and particularly how highly that great prince king Henry 5, and his parliament, thought England concerned in providing for the security of traders, and scouring the seas of rovers and free-booters. Certainly there never was any age wherein our ancestors were not extraordinary zealous in that affair; looking upon it, as it is and ever will be the chief support of navigation, trade, wealth, strength, reputation and glory of the English nation.

Gentlemen, our concern, as our trade is, ought in reason to be rather greater than that of our fore-fathers: We want no manner of inducements, no motives to stir us up, whether we consider our interest or honour. We have not only the sacred word, but also the glorious acts of the best of kings, which sufficiently manifest to us, that the good and safety of the English nation is the greatest care of his life. Let every man therefore who pretends to any thing of a true English spirit, readily and cheerfully follow so good, so great, so excellent an example, by assisting and contributing to the utmost of his power and capacity at all times towards the carrying on his noble and generous designs for the common good; and particularly at this time, by doing all he can, to the end that by the administration of equal justice, the discipline of the seas, on which the good and safety of the English nation, and these parts of America more especially, entirely depends, may be supported and maintained.

The civil law terms the pirates beasts of prey, with whom no communication ought to be kept; neither are oaths or promises made to them binding. And by the law-marine the captors may execute such beasts of prey immediately without any solemnity of condemnation, they not deserving any benefit of the law.

I believe, gentlemen, that no greater motives can be urged to spur you on in your duty, than to desire you to reflect and consider how long our coasts have been infested with pirates (for the name of men they do not deserve), and how many vessels they have taken and pillaged belonging to this place, as well as multitudes of others belonging to divers parts of his majesty's dominions; and how many poor men in whose blood they have imbrued their hands with the greatest inhumanity imaginable, and how many poor widows and orphans they have made, and how many families they have ruined, and how long they have gone on in their abominable wickedness: Nay, do but consider how those very pirates lately insulted this government, when they sent for medicines, threatening to destroy our vessels and men in case of refusal; nay, since these have accepted of certificates from the government of North Carolina, like dogs to their vomits they have returned to their old detestable way of living, and since taken off these coasts thirteen vessels belonging to British subjects.

I believe you cannot forget how long this town has laboured under the fatigue of watching them, and what disturbances were lately made with a design to release them, and what arts and practices have been lately made use of and effected for the escape of Bonnet their ringleader; the consideration of which shews how necessary it is that the law be speedily executed on them to the terror of others, and for the security of our own lives, which we were

apparently in danger of losing in the late disturbance, when under a notion of the honour of Carolina, they threatened to set the town on fire about our ears.

We shall now call our witnesses, who will relate to you what enormous and horrid crimes the prisoners at the bar have committed in the prosecution of the fact laid in the Indictment.

Clerk. Call Ignatius Pell the boatswain. (Who appeared and was sworn.)

Mr. *Hepworth.* Do you know the prisoners at the bar?—*Pell.* I know them all very well.

Mr. *Hepworth.* Please to give the Court an account what vessels were taken after you came from North Carolina.

Pell. I shall begin before that time. We came from the bay of Honduras, and from thence to Providence, after which we took several vessels, and then we came and lay off this bar, where we took five vessels.

Judge *Trott.* Did all the prisoners come from the bay of Honduras?

Pell. All except Robert Tucker; he came out of a sloop belonging to Bermuda; after that we took a brigantine, out of which we took 14 negroes. After we had discharged the brigantine, we set sail and went to Topsail-inlet at North Carolina, where the ship was run ashore and lost, which Thatch caused to be done. After we had been there some time, captain Thatch came aboard, and demanded all our arms, and took our best hands and all our provision, and all that we had, and left us.

Att. Gen. Were all these men sent aboard of major Bonnet immediately, or no?

Pell. No, Sir, they were put ashore upon an island.

Judge *Trott.* How came they on board the Revenge?

Pell. The boat was sent off to fetch them aboard.

Pris. Major Bonnet came with the boat, and told us, as we were on a Marroon island, that he was going to St. Thomas's to get a commission from the Emperor to go against the Spaniards a privateering, and we might go with him or continue there: so we having nothing left, was willing to go with him.

Att. Gen. You say all were on shore, and all might have gone up into the country; pray what constraints were any of you under?

Pell. Sir, none; when we left Topsail-inlet, it was with a design to go to St. Thomas's for the Emperor's commission to go against the Spaniards; but the first vessel we saw we gave chace to, and came up with her.

Mr. *Hepworth.* What did you take out of that vessel?

Pell. We took some provisions out of her. After we had discharged her, we saw another, which we chased and took.

Att. Gen. Were all these men aboard and in arms at the same time?

Pell. Yes, Sir, all were in arms: so after we had taken some provisions out of her, then we discharged her. Next day we saw two sloops bound to Bermuda, which we took. The next day we gave chace to another, and about seven or eight o'clock we came up with them.

Judge *Trott.* I suppose you were always ready for an engagement; so that they had their arms always in order?

Pell. I know nothing to the contrary.

Judge *Trott.* Was Tucker there in particular?—*Pell.* He was, to be sure.

Judge *Trott.* Go on.

Pell. Then we gave chace to a ship bound ——— and we came up with her, in which were some negroes. We left three negroes on board, and two white men, and sent three hands from the Revenge: but we seeing two sloops more, we stood after them, and the other turned tail, and we never saw them more: so we came up with the sloop, out of which we took 30 barrels of beef, some butter, and other provision.

Mr. *Hepworth.* What did you return in the room of these goods?

Pell. Some molasses that we had on board major Bonnet's sloop, after we had discharged these sloops. Next day we took a ship and a schooner, which major Bonnet took with him.

Mr. *Hepworth.* Did you take no plunder out of those?

Pell. The chief was provisions. Then we sailed in company; and the next day we came to the capes of Virginia, where we met with two vessels bound for Glasgow in Scotland, out of which we took provisions and some tobacco. And after we had discharged them we sailed for cape James; and after we had been at anchor some time, we saw a sloop, which was captain Manwareing: we let down our dory, and sent some hands on board; and in a little time after they came on board the Revenge with captain Manwareing.

Att. Gen. Were all the prisoners on board Manwareing's sloop; or had they all their arms ready when Manwareing was taken?

Pell. I cannot say that they were all on board; but they had all their arms ready.

Judge *Trott.* Did they all appear forward and active? Did none of them shew themselves dissatisfied or unwilling to act at that time?

Pell. No, I don't know but one was as forward and as willing to act as the other; all of them had their arms ready.

Judge *Trott.* Well, how did you proceed after captain Manwareing was taken?

Pell. Next day we haled the schooner alongside of captain Manwareing's sloop, and hoisted out several hogsheads of molasses, and put on board the schooner.

Mr. *Hepworth.* What became of the schooner afterwards?

Pell. After we put Reeves's wife on board, and captain Read's son, we sent them on shore.

Att. Gen. How long was captain Manwareing a prisoner?—*Pell.* About ten weeks.

Att. Gen. Was not there more goods taken out of Manwareing's sloop? What became of them? Did you not share them?

Pell. Yes, we shared a little before we came to cape Fear.

Att. Gen. Did all the prisoners at the bar receive their shares?

Pell. Yes, Sir; I know nothing to the contrary.

Judge *Trott.* They did not refuse their shares, none of them, did they?—*Pell.* No.

Clerk. Have any of you any questions to ask the king's evidence? Robert Tucker, have you any?—*Prisoner.* No, Sir.

Clerk. Edward Robinson, have you?

Prisoner. No, Sir.

Mr. *Hepworth.* May it please your honours, we will proceed to call another evidence.

Clerk. Call captain Thomas Read. (Who appeared, and was sworn.)

Mr. *Hepworth.* Captain Read, please to look upon the prisoners at the bar, if you know them.

Read. I know them all very well.

Mr. *Hepworth.* Please to give an account to the Court how you was taken, and also of the taking of captain Manwareing.

Read. The sloop Revenge was at an anchor, and the schooner lay alongside of her. I was then a prisoner on board the sloop Revenge. In the evening we saw a sloop coming into the bay, and major Bonnet sent off five hands with the Dory; and about an hour after they came on board the Revenge, and brought captain Manwareing. After they brought him on board, major Bonnet demanded his papers, and he gave them to him. He asked him from whence he came? He answered, from Antegoa, and bound for Boston. He asked him what he had on board? He told him: but it being night, he said but little more to him: next morning they brought the sloop and haled alongside the schooner; and I saw them hoist out several hogsheads out of the sloop and put on board the schooner. And I heard major Bonnet say the next day, that there were 21 hogsheads; and that he had ordered pitch and tar to be put on board the sloop, and in the evening they took the foresail and mainsail of the schooner, and sailed for cape Fear.

Judge *Trott.* You look upon all those men as belonging to major Bonnet, and they were all active in the taking of Manwareing?

Read. I did not see but one acted as the other did.

Judge *Trott.* You did not look upon them to be prisoners, like you and your men?

Read. No, Sir.

Judge *Trott.* Do you know any thing of their sharing? Did they all take their shares?

Read. I know nothing of that; for we were all in the round-house, and were not admitted among them at that time.

Mr. *Dean.* Did you see them have their shares each of them?

Read. I will not say I saw them have every man his particular share; but they were all together when they did share.

Clerk. Would any of you ask the king's evidence any question?

Prisoners. We desire nothing but that he would speak the truth.

Mr. *Hepworth.* May it please your honours, we shall proceed to call another evidence, which is captain Peter Manwareing.

Clerk. Call captain Peter Manwareing. (Who appeared, and was sworn.)

Mr. *Hepworth.* Captain Manwareing, do you know the prisoners at the bar?

Manwareing. I know them very well.

Mr. *Hepworth.* Please to give the Court an account of your being taken by them.

Manwareing. When they came on board us we were at an anchor. About eight or nine o'clock in the evening we saw the canoe coming: I ordered my man to hale them. He asked from whence they came, and what sloops they were? They answered, capt. Thomas Richards from St. Thomas's, and capt. Read from Philadelphia. So we were glad to hear of it; so hoped all was well. But as soon as they came up the shrouds, they clapped all hands to their cutlashes. Then I saw we were taken: and I said, Gentlemen, I hope, as you are Englishmen, you will be merciful, for you see we have nothing to defend ourselves. They told us they would if we were civil. So I was ordered on board the Revenge with two of their men. So when I came on board, major Bonnet desired me to come under the awning. He demanded my papers. I gave them to him. So he told me I must lie as well as I could. Next day morning Robert Tucker came to me, and asked me what I had on board? and told me, if I did not tell the truth, it should be the worse for me. I told him I had some molosses, sugar, and rum. Then he asked me concerning my passengers, what money they had? I told him I never examined passengers what money they had. So then major Bonnet ordered them to come and lie alongside the schooner; but what was done till then on board my sloop I cannot tell. But then they took out the molosses and the rum, and put on board the schooner.

Att. Gen. How did they behave themselves with respect to yourself afterwards?

Manwareing. They were civil to me, very civil: but they were all very brisk and merry, and had all things plentiful, and were a making punch and drinking.

Clerk. Would any of you the prisoners ask the king's evidence any questions?

They ask no questions.

Mr. *Hepworth.* Please your honours, we will proceed to call another evidence.

Clerk. Call James Killing, capt. Manwareing's mate. (Who appeared, and was sworn.)

Mr. *Hepworth.* Do you know the prisoners at the bar?

Killing. Yes, Sir, I know them all very well.

Mr. *Hepworth.* Please to give the Court an account of the taking captain Manwareing's sloop.

Killing. The 31st of July, between nine and ten of the clock, there running a strong

tide at ebb, we came to an anchor about fourteen fathom of water near cape James. In about half an hour's time I perceived something like a canoo: So they came nearer. I said, here is a canoo a-coming; I wish they be friends. I haled them, and asked from whence they came? They said, capt. Thomas Richards from St. Thomas's, and capt. Thomas Read from Pennsylvania. They asked me from whence we came? I told them from Antegoa. They said we were welcome. I said they were welcome, as far as I knew. So I ordered the men to hand down a rope to them. So soon as they came on board they clapped their hands to their cutlasses; and I said we are taken. So they cursed and swore for a light. I ordered our people to get a light as soon as possible. So they ordered our captain immediately to go on board the Revenge; and accordingly was sent with two of their own hands; and I saw him no more that night. So when they came into the cabin, the first thing they begun with was the pine-apples, which they cut down with their cutlasses. They asked me if I would not come and eat along with them? I told them I had but little stomach to eat. They asked me why I looked so melancholy? I told them I looked as well as I could. They asked me what liquor I had on board? I told them some rum and sugar. So they made bowls of punch, and went to drinking of the Pretender's health, and hoped to see him king of the English nation: then sung a song or two. Next morning they ordered more hands on board the sloop, and so came and lay along-side the schooner; after that they hoisted out several hogsheads of molosses, and several hogsheads of rum, and put on board the schooner, and took several barrels of pitch and tar and put on board the sloop; and I happened to go down into the cabin, and Robert Tucker came to me, and told me I had no business there, but was better go forward and work among the rest of the men. So I went forward and asked who that was? They told me that was their father. In the after-part of the day two of Bonnet's men were ordered to the mast to be whipt, and I was threatened if I did not confess all I knew. Then Robert Tucker came to me, and told me I must go along with them. I told him I was not fit for their turn, neither were my inclinations that way. After that major Bonnet himself came to me, and told me I must either go on a marroon shore, or go along with them, for he designed to take the sloop along with him. That evening between eight and nine we were ordered to set sail, but whither I knew not. So we sailed out that night, and I being weary with the fatigue, went to sleep; and whether it was with a design or not I cannot tell, but we fell to leeward of the Revenge; and in the morning major Bonnet took the speaking trumpet, and told us if we did not keep closer, he would fire in upon us, and sink us. So then we proceeded on our voyage till we came to cape Fear.

Judge *Trott.* Have you done with your evidence.—*Killing.* Yes.

Clerk. Would any of you prisoners ask the king's evidence any questions?

No questions asked by the prisoners.

Judge *Trott.* You the prisoners at the bar stand charged with felony and piracy committed on a certain sloop belonging to captain Peter Manwareing. The evidences have proved it home upon you; the boatswain tells what old offenders you were, and that you were with Thatch off this bar, and that you were at the taking several vessels after you left Topsail Inlet; and all the evidences prove the same; so that it appears all of you took up with this wicked course of life out of choice: Now what evidences have you to come in on your behalf? or what have you to say in your defence? Now is your time to speak, what you have to say?

Clerk. Robert Tucker, what have you to say?

Tucker. After captain Thatch had taken what we had and left us, major Bonnet came and told us that he was going to St. Thomas's for the emperor's commission, if there was any to be had.

Judge *Trott.* Pray, if you were bound to St. Thomas's, what did you do at the Cape of Virginia? What business had you there?

Tucker. We had but little provision on board.

Judge *Trott.* So you went and met with some by the way.

Clerk. Edward Robinson, what have you to say?

Robinson. When captain Thatch left us it was on a marroon island, and major Bonnet came and told me he was going to St. Thomas's, and we might go with him.

Judge *Trott.* Was not you one of them that was off this bar with Thatch?—*Robinson.* Yes.

Judge *Trott.* Why did you not come on shore then?

Robinson. I would have come on shore, but captain Thatch would not give me leave. I was with Mr. Wragg, and told him I would go on shore if I had liberty.

Judge *Trott.* Was you one of the five that came up to town?—*Robinson.* No.

Clerk. Neal Paterson, what have you to say in defence of yourself?

Paterson. Thatch came on board and carried away fourteen of our best hands, and marrooned twenty-five of us on an island; and major Bonnet came and told us he was minded to go to St. Thomas's, and if there were any commissions from the emperor, to get one, and go a privateering against the Spaniards; so I was willing to go with him, and when I was on board, he forced me to do what he pleased, for it was against my will.

Judge *Trott.* Did not Thatch carry away your money and what you had besides of goods?

Paterson. Yes.

Att. Gen. Was you not all ashore when you received the act of grace.

Paterson. Yes, Sir.

Att. Gen. Why had you not continued ashore? Why did you join with Bonnet? Or who forced you to it?

Paterson. But, Sir, it was in a strange land, and I had no money, nor nothing left, and I was willing to do something to live; but it was against my will to go a pirating.

Judge *Trott.* If you were forced and took only provisions, pray how did you come to share so much money and goods afterwards? You say Thatch carried away what you had before.

Paterson. I could not hinder the rest from doing what they pleased; but it was contrary to my inclination.

Clerk. William Scot, what have you to say?

Scot. When we left Topsail Inlet, it was to go to St. Thomas's; and I asked whether there was provisions on board? They told me there was enough, which was not above ten or eleven barrels.

Judge *Trott.* So you took it where you could find it, because you had it not of your own: but pray what did you with so much molosses, which was neither fit to eat or drink?

Scot. What I did, was to keep me from perishing; but it was not in my power to hinder the rest.

Clerk. Job Bayley, what have you to say?

Bayley. When capt. Thomas or major Bonnet was ready to sail, I went aboard, and I asked whether they had provisions on board? They told me they had: but in a few days it was all spent, and then I was forced to do as the rest did.

Judge *Trott.* But why did you not do as captain Manwareing and his men did? You see they did not act as you did.

Bayley. Capt. Manwareing was not taken then.

Judge *Trott.* But how came you to join with them afterwards; And pray what made you fight against col. Rhett, when he came out with lawful authority to you.

Bayley. We thought it had been a pirate.

Judge *Trott.* And so one pirate might fight with another. But how could you think it was a pirate, when he had king George's colours?

Att. Gen. May it please your honours, and you Gentlemen of the Jury, the evidences have plainly proved, that all the prisoners at the bar were at the taking of capt. Manwareing's sloop, that they all consented to, and all were active in it, and all received their shares; so that I think it hath been plainly proved home upon them.

Judge *Trott.* Gentlemen of the jury, the prisoners at the bar all stand indicted for felony and piracy committed on a sloop belonging to captain Peter Manwareing, as it is expressed in the Indictment. The boatswain tells us what old offenders they were before they went to Topsail Inlet; that they were at the taking of no less than 13 vessels; and that in particular they were at the taking of captain Manwareing. Then comes captain Read, and he was taken before captain Manwareing, and was then a prisoner on board the pirate sloop, and he tells you, they all appeared in arms, and that he did not look upon them as prisoners, or under constraint, but of the same company; and he tells you he saw them take captain Manwareing, and that he saw them take out the goods, as is mentioned in the Indictment, out of Manwareing's sloop. Then comes captain Manwareing himself, and he says all the goods mentioned in the indictment were taken out, and that they shared these goods among themselves. Then comes Killing the mate, and he proves the same, and particularly Tucker, he was so forward, that he told them, if they did not tell the truth, it should be the worse for them: And Paterson was so active, that he was for having them brought to the gun to make them confess; and that all the rest had their arms ready, and all had their shares: So that I think the evidences have fully proved the indictment upon them, and that it is very plain and home against them. They plead indeed, that they were forced and constrained to go, but give no proof of it; and therefore what constraint any of them appears to be under, I shall leave to your considerations: Though I think the evidence is very plain and clear, yet I shall not pretend to direct your judgments. I shall only remark to you what the wise man saith, that "he that justifieth the wicked, as well as he that condemneth the just, even both are an abomination to the Lord."

Then an Officer was sworn to keep the Jury.

And about two hours after the Jury returned, and gave in their Verdict.

Clerk. Gentlemen, answer to your names. Timothy Bellamy.

Timothy Bellamy. Here, &c.

Clerk. Are you all agreed of your verdict?

Jury. Yes.

Clerk. Who shall say for you?

Jury. The foreman.

Clerk. Robert Tucker, hold up thy hand. (Which he did.) How say you? Is he Guilty of the piracy whereof he stands indicted, or Not Guilty?—*Foreman.* Guilty.

Clerk. What goods and chattels, &c.

Foreman. None that we know of.

Clerk. Then hearken to your verdict, as the Court hath recorded it. You say that Robert Tucker is Guilty of the piracy whereof he stands indicted, and that he had no goods or chattels, &c.—*Jury.* Yes.

And the Jury also found Edward Robinson, Neal Paterson, William Scot, and Job Bayley Guilty.

Clerk. Marshal, look to your prisoners.

Then the Court proceeded to the Trial of John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers alias Evis, Samuel Booth, William Hewet, and John Levit, for the aforesaid fact, in piratically taking the said sloop Francis, captain Peter Manwareing commander.

Clerk. Set John William Smith, Thomas Carman, &c. to the bar.

Then the Petit Jury were called over.

Clerk. You the prisoners at the bar: These good men that were called last, and have here appeared, are those that shall pass between our sovereign lord the king and you, upon your lives and your deaths; therefore if you or any of you will challenge them or any of them as they come to the book to be sworn, and before they be sworn, you may, and you shall be heard.

Then the Jury were sworn, whose names are as followeth: Samuel Prioleau, foreman, John Hodgson, Garrard Vanvilsen, Robert Harvey, Joshua Marriner, Thomas Fairchild, Henry Gennelack, John Jeffers, Charles Marche, John Grimbal, Benjamin Griffin, Joseph Massey.

Then the usual Proclamation for information was made. And the prisoners being bid to hold up their hands, the Clerk charged the Jury with them thus:

Clerk. You Gentlemen of the Jury that are sworn, look upon the prisoners, and hearken to their Charge.

Then the Indictment was read as followeth:

"The jurors for our sovereign lord the king, do upon their oaths present, that Daniel Harriott, late of Jamaica, mariner; John William Smith, late of Charles-Town, mariner; Thomas Carman, late of Maidstone in Kent, mariner; John Thomas, late of Jamaica, mariner; William Morrison, late of Jamaica, mariner; William Livers alias Evis, late of Dublin, mariner; Samuel Booth, late of Charles-Town, mariner; John Levit, late of North Carolina, mariner; and William Hewet, late of Jamaica, mariner; the 2d day of August, &c. as before."

Clerk. Upon this Indictment they have been arraigned, &c. as before.

The witnesses against the prisoners were Ignatius Pell the boatswain, captain Thomas Read, captain Peter Manwareing, and Mr. James Killing his mate, who all gave the same evidence against these as against the others that were tried before.

Clerk. Will any of you prisoners ask the king's evidence any questions?

No Questions asked by the prisoners.

Judge *Trott.* You the prisoners at the bar, you have heard how fully the witnesses have charged the facts upon you: Now what you have to say in your Defence, I shall be ready to hear you.

Clerk. John William Smith, if you have any thing to say, you have liberty to speak.

Smith. When we left Topsail-Inlet, I knew nothing but that we were going to St. Thomas's; but after we were out, they hoisted the bloody flag: But I did before believe we were going to St. Thomas's.

Att. Gen. Did you bear arms on board of major Bonnet?—*Smith.* Yes, Sir.

Att. Gen. Was you at the taking all those vessels?

Smith. Yes, Sir; but it was against my will.

Clerk. John Carman, what have you to say?

Carman. As for what I did on board captain Thatch, I was forced; but when I came to North Carolina, I would not have went on board, but major Bonnet shewed me the Act of Grace; and when I entered myself on board, it was to get my bread, in hopes to have went where I might have had business; for when we left Topsail Inlet, I had not signed the Articles.

Pell. But you gave the captain your word that you would.

Carman. When I was left in the sloop, I endeavoured to make my escape with the sloop.

Judge *Trott.* So, I find you wanted a vessel of your own.

Carman. No, but to have got one from them: But I could not.

Att. Gen. This confirms what the king's evidence proves against them.

Clerk. John Thomas, what have you to say?

Thomas. We had nothing left us, and we were on a marroon island, and major Bonnet he came and told me I might go with him; but it was against my will to bear arms.

Judge *Trott.* Was not you off this bar?

Thomas. Yes, but I was forced to it.

Mr. *Hepworth.* And was you not at the taking of captain Manwareing's sloop?

Thomas. Yes.

Mr. *Hepworth.* And had you not your share?

Thomas. Yes, Sir.

Judge *Trott.* And yet you say you was not willing to go a pirating.

Clerk. William Morrison, what have you to say?

Morrison. Captain Thatch had run the sloop ashore, and major Bonnet went up to the governor for the Act of Grace; and when he returned he told me I might go to St. Thomas's; and after that he said provisions would fall short, and he should go on the coast of Virginia to see for some.

Judge *Trott.* But was that your manner of going for a commission, to take thirteen vessels by the way? But was you not at the taking Manwareing's sloop? And had you not your share?

Clerk. William Livers alias Evis, what have you to say?

Evis. After we came to North Carolina, and captain Thatch had lost the ship, major Bonnet told me he would give me my passage to St. Thomas's, and he would endeavour to get a ship there, and I might go with him a privateering: but when he came to sea, I found how it was, and I would not consent for a long time; but at last they forced me to it.

Judge *Trott.* But you had your share as well as the rest?

Evis. They forced me to do what I did.

Clerk. Samuel Booth, what have you to say?

Booth. As we came from Topsail-Inlet, we met with the sloop Revenge; they boarded us and took us, and I was a prisoner three weeks

before I consented; and then they ordered me to the gun before I would consent.

Judge *Trott*. But you had your share of captain Manwareing's sloop?

Booth. But my inclination was not that way.

Clerk. William Hewet, what have you to say?

Hewet. I designed to go to St. Thomas's with major Bonnet, for he told me he was bound thither; so I was willing to go with him.

Clerk. John Levit, what have you to say?—[He makes no defence.]

Att. Gen. May it please your honours, the boatswain and all the evidences prove the indictment upon each of the prisoners, that they were all at the taking of captain Manwareing's sloop, and all had their shares.

Judge *Trott*. Gentlemen of the Jury, I think I need say but little on this matter: They all confess the fact of which they stand indicted. Some of them were old offenders, and all of them were proved to be at the taking of capt. Manwareing's sloop, and all took their shares: so that I think the fact is very fully and clearly proved upon them. But I shall leave that to your considerations, and I pray God direct you to give a true verdict.

Then an officer was sworn to keep the jury.

Who, after they had considered of their verdict, returned and found John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers alias Evis, Samuel Booth, William Hewet, and John Levit, guilty.

Then the Court adjourned to Friday morning.

Friday, October 31, 1718.

The Court proceeded to arraign William Eddy alias Nedy, Alexander Annand, George Ross, George Dunkin, Thomas Nichols, John Ridge, Matthew King, Daniel Perry, and Henry Virgin, upon the following Indictment, for piratically taking captain Manwareing.

"The jurors for our sovereign lord the king do upon their oaths present, that William Eddy alias Nedy, late of Aberdeen, mariner; Alexander Annand, late of Jamaica, mariner; George Ross, late of Glascow, mariner; George Dunkin, late of Glascow, mariner; Thomas Nichols, late of London, mariner; John Ridge, late of London, mariner; Matthew King, late of Jamaica, mariner; Daniel Perry, late of Guernsey, mariner; and Henry Virgin, mariner, late of Bristol; the second day of August, in the fifth year of the reign of our sovereign lord king George, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, &c. as before."

Who all pleaded Not Guilty.

Then the Court proceeded on their trial.

And the Jury were sworn, whose names are as followeth:

Timothy Bellamy, foreman, &c. as before.

The same witnesses against these, viz.

Ignatius Pell, the boatswain; captain Thomas Read; captain Peter Manwareing, and Mr. James Killing, his mate;

Who all gave the same evidence against these prisoners as against the others, excepting Thomas Nichols.

Capt. *John Stevenson*, one of the captors, being sworn, declared, that George Ross, the gunner of the pirate's sloop, was for blowing up the said sloop, and that he acknowledged he was to have set fire to the train, and that he would have done it.

As to Thomas Nichols:

Ignatius Pell declared, that Nichols, after he came to sea, was very much discontented; but major Bonnet said he would force him to go. However, he would not join with the rest of the men, but always separated himself from the company.

Capt. *Read* said, that Nichols behaved himself different from the rest, and did not join with them.

Capt. *Manwareing* said, that Nichols, when he was aboard his sloop, said, 'he did hope it would be over with him in a little time, for he hoped to get clear of them,' and looked very melancholy, and never joined with the rest in their cabals when they were drinking; and when major Bonnet sent for him, he refused to go, and said, 'he would die before he would fight.'

Clerk. Will any of you ask the king's evidence any questions?

Nichols. Mr. Killing, did you never hear me say I would leave that course of life?

Judge *Trott*. Did you hear him say so?

Killing. When he came on board he told me, 'he would give the whole world, if he had it, to be free from them:' And when he was on board and major Bonnet sent for him, he refused to go on board the Revenge, till he sent to fetch him by force, and then he told me 'he would not fight if he did lose his life for it:' And he was not with them when they shared; and he told them 'he hoped he should not be long with them;' and he never was at their cabals as the rest were.

Judge *Trott*. He seems to be under a constraint indeed, and therefore must be taken into consideration.

Clerk. Will any of you prisoners ask any more questions?—[None asked.]

Judge *Trott*. If any of them have any thing to say, they now have their liberty to speak.

Clerk. William Eddy alias Nedy, what have you to say?

Nedy. I never was on board captain Manwareing's sloop, nor had no hand in it.

Judge *Trott*. You was one of Bonnet's crew.

Nedy. I never acted in it.

Judge *Trott*. That is no excuse; it is not such or such a one that goes on board only, but those that stand ready to assist them, have as great a hand in the fact as the other; for

men would not be taken by two or three, if they had no more help; so that the whole crew are equally concerned at such a time.

Clerk. Alexander Annand, what have you to say?

Annand. When we were at Topsail-Inlet, major Bonnet told me he would go and get a clearance for the sloop, for he designed to go to St. Thomas's for a commission, and I might go with him: So I auspected nothing till we were out at sea, and then I could not help it.

Judge *Trott.* But why did you not declare against it then, and so not join with them?

Annand. I was but one man and a stranger, and I was afraid I should have lost my life.

Clerk. George Ross, what have you to say?

Ross. I belonged to ——— sloop, and we met with major Bonnet and was taken by him. Next day two of the men told me I must go with them. I answered them, No; I did not design to leave the sloop: But they told me I must: and they told me if I would but consent I should have any thing. And a little after captain Manwareing was taken.

Judge *Trott.* And you had your share of Manwareing's goods?—*Ross.* Yes.

Judge *Trott.* So, though you were unwilling at first, you was willing afterward, and also fought colonel Rhett when he came out against you.

Ross. They told me it was captain Thatch; for my part I did not know who Thatch was.

Judge *Trott.* But pray what authority had you to fight any body?

Clerk. George Dunkin, you may speak what you have to say.

Dunkin. After we were taken at the capes of ——— major Bonnet came to me and told me I must go along with them. But I told him I could not leave the vessel. He told me I must.

Judge *Trott.* But why did you join with them afterwards in taking your share of Manwareing's goods? and why did you fight col. Rhett and his men? If you had not fought, you might have saved the lives of twelve or fourteen men.

Dunkin. Major Bonnet declared, if any one refused to fight he would blow his brains out.

Thomas Nichols made his defence before.

Clerk. John Ridge, what have you to say?

Ridge. After we came to Topsail-Inlet, and the ship was lost, major Bonnet came and told me that he would go and accept the Act of Grace, and get a clearing for the sloop, and go to St. Thomas's for a commission, and he expected we would go with him; so when he was gone up to the country we rigged the sloop; so the quarter-master, the boatswain and he agreed together; but for my part I knew nothing what their design was; and so the first vessel we saw they took: but it was my resolution to go away by the first opportunity.

Clerk. Matthew King, what have you to say?

King. When we were at Topsail-Inlet, captain Thatch marrooned us on an island, and left us; and major Bonnet told us he would go to St. Thomas's; but the first prize we met with we took, having but little provisions on board.

Judge *Trott.* How could you think of going to St. Thomas's without provisions?

Att. Gen. But the boatswain says there were provisions on board; and several barrels of flour, and several barrels of beef and pork.

Judge *Trott.* What need had you then to go a pirating?

King. I did not know it till we were out.

Judge *Trott.* Bonnet had not above five hands, and there were of you twenty-five; why would you be all commanded by them? You had no need to yield to them.

Clerk. Daniel Perry, what have you to say?

Perry. When captain Thatch left us it was on a maroon island, and major Bonnet came and told us he had the Act of Grace, and so we might go with him.

Judge *Trott.* Is that all you have to say? You knew Thatch and Bonnet were both pirates, and why would you go with them again?

Clerk. Henry Virgin, what have you to say?

Virgin. Major Bonnet ordered about thirty hands to be ready, and in a little time we were ordered on board; and when we were about an hundred leagues from land, he asked if there were any that would go a marrooning; and I believe there were two or three that promised him they would, though I did not.

Judge *Trott.* But had you no opportunity to come from them?

Virgin. If we had known any thing of the Act of Grace when we were off this bar, we had come ashore. I went to make my escape, and leapt into the water, and had like to have been drowned.

Judge *Trott.* How many vessels have you been at the taking and burning of, do you think?

Virgin. I believe about three.

Mr. *Hepworth.* He was with them at the bay of Honduras, and all along.

Virgin. But I never gave my consent; for captain Thatch never asked any of us.

Judge *Trott.* Would any of the prisoners say any more? If they will I am ready to hear them.

Att. Gen. May it please your honours, and you Gentlemen of the Jury, these three, Nichols, Dunkin, and Ridge, seem to make some defence. As for Nichols, he was with them when Manwareing was taken; and the mate tells us, that he separated himself from the rest of the cabal; and when they shared, he told them they might do as they pleased with his share, for he hoped he should not be with them long; so that it appears that he seperated himself from the rest of the company from the very first: These things therefore ought to be considered. And as for Dunkin, he looked upon himself as a prisoner at first: but the boatswain indeed says he had his shares. And as for Ridge, he said, that he resolved to make his escape. For all the rest, they seem to be equally guilty.

Judge *Trott*. Gentlemen of the jury, the prisoners at the bar stand indicted for felony and piracy, committed on a sloop belonging to captain Peter Manwareing commander, and not only did they break and board the said Manwareing's sloop, which was an act of piracy, but it hath been proved upon them, that they were at the taking of thirteen vessels after they left Topsail-Inlet. Indeed there are three that have something to say in their defence, Nichols, Ridge, and Dunkin. As for Dunkin, Pell says he had his share, as the rest had: Captain Read looked upon him as a prisoner, but captain Manwareing did not. As for Ridge, he was at North Carolina, and took up with Bonnet to go to St. Thomas's, and it is possible for a man to be deceived, for Pell declares that they were bound to St. Thomas's, at first; and Killing the mate declared, that he told him he would free himself from that course of life the first opportunity: So I shall leave this to your consideration. But for Nichols, I think it is plain he was under constraint and force; for Pell himself declares that he would have nothing to do with their shares, and he did hope that he should not be long with them. Captain Manwareing, and Mr. Killing his mate, all confirm the same. And when he was sent for to come on board Bonnett, to go out to fight colonel Rhett, he refused to go; and when he was forced to go on board, he said he would die before he would fight; and accordingly went into the hole, and did not fight colonel Rhett. So that by the whole course of the evidence, I think it is very clear that he was under constraint and fear. As to the rest, I think the proof is full against them; but I shall leave them to your consideration. You know that as the innocent must not be condemned, so the guilty ought not to be acquitted. Remember you have the lives of these persons in your hands; and I pray God direct you to give a true verdict.

Then an officer was sworn to keep the Jury.

Who, after they had considered of their verdict, returned, and found William Eddy alias Nedy, Alexander Annand, George Ross, George Dunkin, John Ridge, Matthew King, Daniel Perry, and Henry Virgin, Guilty; and Thomas Nichols, Not Guilty.

Then the Court proceeded to arraign James Robbins alias Rattle, James Mullet alias Millet, Thomas Price, James Wilson, John Lopez, and Zachariah Long, upon the following Indictment, for piratically taking capt. Manwareing.

"The jurors for our sovereign lord the king do upon their oath present, that James Robbins alias Rattle, late of London, mariner; James Mullet alias Millet, late of London, mariner; Thomas Price, late of Bristol, mariner; James Wilson, late of Dublin, mariner, John Lopez, late of Oporto, mariner; and Zachariah Long, late of the province of Holland, mariner; the second day of August, in the fifth year of the reign of our sovereign lord George, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c."

To which Indictment James Robbins alias Rattle, James Mullet alias Millet, Thomas Price, John Lopez, and Zachariah Long, pleaded Not Guilty. James Wilson pleaded Guilty.

Then the Court proceeded upon the Trial of those that pleaded Not Guilty.

The jurors were sworn, whose names are as followeth:

Samuel Proileau, foreman; John Hodges, Garrat Vanvelsin, Lucas Stoutenborough, Joshua Mariner, Thomas Fairchild, Henry Genelac, John Jeffers, Charles Marche, John Grimball, Benjamin Griffin, Joseph Massey.

The witnesses against the prisoners were the below-named:

Ignatius Pell, the boatswain; capt. Thomas Read; capt. Peter Manwareing, and Mr. James Killing his mate;

Who all gave the same evidence against these prisoners, as against the others that were tried before.

Clerk. You, the prisoners at the bar, have heard what the king's evidence have sworn against you. Now is your time to make your Defence.

Clerk. James Robbins, what have you to say?

Robbins. I was on board the Revenge, and then I was sent on board of capt. Read's sloop, and was there four days; and then was sent on board the Revenge again: for I was about to run away, if I had an opportunity.

Clerk. James Mullet, what have you to say?

Mullet. When we left Topsail-Inlet, it was to go to St. Thomas's; so major Bonnet told me: and I being on a marroon shore, I was willing to go with him.

Clerk. Thomas Price, what have you to say?

Price. Capt. Thatch left us on a marroon shore, and had nothing left; and major Bonnet told me I might go with him to St. Thomas's; but I designed not to go a pirating.

Judge *Trott*. Had you not your share?

Price. I was forced to do as I did when I was on board.

Clerk. John Lopez, what have you to say?

Lopez. I was at the bay of Honduras, and was taken by Thatch and carried to Topsail-Inlet, and there he marrooned me on an island, and came with five hands and carried all away that we had, and left us. And major Bonnet told me he would go to St. Thomas's, and I might go along with him. I told capt. Manwareing, 'I would not go a pirating, for I did not like it.'

Judge *Trott*. Did you not share a little before you came to cape Fear?

Lopez. Yes; but it was against my will.

Judge *Trott*. Capt. Manwareing, do you know any thing of this man?

Capt. *Manwareing*. All as I know, he told me 'he had a wife and children; and that he

did not like that course of life.' This is all I can say of him.

Clerk. Zachariah Long, what have you to say?

Long. When we sailed, I knew nothing but that it was to go to St. Thomas's, till afterwards; and then I must do as the rest did.

Then the Judge summed up the evidence.

And an officer was sworn to keep the Jury,

Who after they had considered of their Verdict returned, and found the abovesaid James Mullet alias Millet, Thomas Price, John Lopez, and Zachariah Long, Guilty; and James Robbins alias Rattle, Not Guilty.

Then the Court adjourned till Saturday morning.

Saturday, Nov. 1, 1718.

The Court met according to adjournment.

Then the Court proceeded to arraign Edward Robinson, Robert Tucker, William Scot, Job Bayley, Neal Paterson, John William Smith, Thomas Carman, and John Thomas, upon the following Indictment.

"The Jurors for our sovereign lord the king do upon their oath present, that Stede Bonnet alias Edwards alias Thomas, late of the island of Barbadoes, mariner; David Heriot, late of the island of Jamaica, mariner; William Scot, late of Aberdeen, mariner; Job Bayley, late of London, mariner; Edward Robinson, late of Newcastle upon Tyne, mariner; Robert Tucker, late of the island of Jamaica, mariner; Neal Paterson, late of Aberdeen, mariner; John William Smith, late of Charles-Town, mariner; Thomas Carman, late of Maidstone in Kent, mariner; and John Thomas, late of the island of Jamaica, mariner; the 31st of August, in the fifth year of the reign of our sovereign lord George, by the grace of God of Great Britain, France, and Ireland, king, defender of the faith, &c. by force, and arms, &c. upon the high sea, in a certain place called Cape Fear, in the latitude of 34° or thereabouts, and within the jurisdiction of the Court of Vice-Admiralty of the province of South Carolina, did piratically and feloniously set upon, board, break, and enter a certain merchant-sloop called the Fortune, Thomas Read, commander, then being a sloop of certain persons (to the jurors aforesaid unknown) and then and there piratically and feloniously did make an assault in and upon the said Thomas Read, and other his mariners, (whose names to the Jurors aforesaid are unknown). In the same sloop, against the peace of God, and of our now sovereign lord the king, then and there being, piratically and feloniously did put the aforesaid Thomas Read, and others his mariners of the same sloop, in the sloop aforesaid, then being in corporal fear of their lives, then and there in the sloop aforesaid, upon the high sea, in the place aforesaid, called Cape Fear, in the latitude of 34°, or thereabouts, aforesaid, in the sloop aforesaid, and within the jurisdiction aforesaid, piratically and feloniously did steal, take, and carry away six tierces of bread, of the value of 13*l.* current money of Pensylvania; four barrels of bread, of the value of 4*l.* like current money of Pensylvania; one barrel of linseed oil, of the value of 7*l.* like current money of Pensylvania; two tierces of hams, of the value of 20*l.* like current money of Pensylvania; and 20 barrels of flour, of the value of 20*l.* like current money of Pensylvania; six China plates, of the value of 3*l.* like current money of Pensylvania; seven iron-bound blocks, of the value of 40*s.* like current money of Pensylvania; 90 fathom of rigging, of the value of 3*l.* like current money of Pensylvania; the said pump, with boxes and breaks, of the value of 20*s.* like current money of Pensylvania; the goods and chattels of certain persons (to the jurors aforesaid unknown) then and there upon the high sea aforesaid, in the aforesaid place, called Cape Fear, in the latitude of 34, or thereabouts, aforesaid, in the sloop aforesaid, and within the jurisdiction aforesaid; being found in the aforesaid sloop, in the custody and possession of the said Thomas Read, and others his mariners in the same sloop, from the said Thomas Read, and others his mariners of the said sloop, and from their custody and possession, then and there, upon the high sea aforesaid, in the place aforesaid, called Cape Fear, in the latitude of 34°, or thereabouts, as aforesaid, in the sloop aforesaid, and within the jurisdiction aforesaid, and against the peace of our said now sovereign lord the king, his crown and dignity, &c."

Who all pleaded Not Guilty.

Then the Court proceeded upon their Trial.

The Petit Jury were sworn, whose names are as followeth:

Timothy Bellamy, foreman, George Ducket, John Rivers, William Sheriff, Benjamin Dennis, Hugh Durfey, Thomas Chambers, Daniel Townshend, John Lee, Thomas Bee, John Barton, Richard Fairchild.

Then the usual proclamation for information was made. And the prisoners being bid to hold up their hands, the clerk charged the jury with them thus:

Clerk. You the gentlemen of the jury that are sworn, look upon the prisoners, and hearken to their Charge.

Then the Indictment was read, as before.

Clerk. Upon this Indictment they have been arraigned, &c. as before.

Then the witnesses against the prisoners were called.

Clerk. Call Ignatius Pell, the boatswain. (Who appeared and was sworn.)

Mr. *Hepworth.* Do you know the prisoners at the bar?—*Pell.* Yes, Sir.

Mr. *Hepworth.* Give the Court an account of the taking capt. Thomas Read, and plundering of his sloop.

Pell. Capt. Read was in company with

two vessels more, which we took, but did not share, till we came to Cape Fear.

Mr. *Hepworth.* Were the goods mentioned in the Indictment taken out?—*Pell.* Yes, Sir.

Judge *Trott.* Did all the prisoners at the bar receive their shares?—*Pell.* Yes.

Clerk. Will any of you ask the king's evidence any questions? Edward Robinson, will you ask any questions?

Robinson. Boatswain, do you not remember when we left Topsail-Inlet, it was with a design to go to St. Thomas's?

Pell. I do believe you might think we were going to St. Thomas's; but the first vessel we saw, we consented to take, and you had your share as well as the rest.

Clerk. Robert Tucker, will you ask any question?—*Tucker.* No.

Mr. *Hepworth.* May it please your honours, we will proceed to call another evidence.

Capt. *Peter Manwareing* called and sworn.

Mr. *Hepworth.* Do you know the prisoners at the bar?

Manwareing. I know them all.

Mr. *Hepworth.* Please to give the Court an account of the sharing of capt. Read's goods at Cape Fear.

Manwareing. As for taking of captain Read, I can say nothing, because he was taken by them before I was taken; but when we came to Cape Fear, they shared what they had.

Judge *Trott.* And had all the prisoners at the bar their shares?

Manwareing. I did not see any of them refuse; and they were amongst the rest when they did share.

Clerk. Will any of you ask the evidence any questions?

The prisoners ask no questions.

Mr. *Hepworth.* We will proceed to call another evidence. Capt. Thomas Read, do you know the prisoners at the bar?

Read. I know them all.

Mr. *Hepworth.* Please to give the Court an account of your being taken and plundered by them.

Read. After we were taken, Robert Tucker with some others came on board; and then we sailed to Cape Inlopen, where captain Manwareing was taken, and after that to Cape Fear.

Mr. *Hepworth.* Were those goods taken out as are mentioned in the Indictment?

Read. Yes, Sir.

Judge *Trott.* Did all the prisoners receive their shares?

Read. Yes, I did not see but what they did: They were all together when they shared.

Clerk. Will any of you ask the evidence any questions?

Robinson. Capt. Read, when did you see me on board your sloop?

Read. I cannot say I saw you on board; but you were with them when they shared.

Judge *Trott.* If you were not on board the sloop, you was one of the crew; and, as I told you before, it is not they only are pirates that go on board of a vessel, but they that stand ready to assist are as much pirates as the other, and are as much concerned in the fact.

Clerk. Will any of you ask any questions? *Prisoners.* No.

Mr. *Hepworth.* We will proceed to call another evidence. James Killing, do you know the prisoners at the bar?—*Killing.* Yes, Sir.

Mr. *Hepworth.* Give the Court an account of what you know of the taking of capt. Read.

Killing. I can say but little to the matter till we came to Cape Fear, and there they shared the goods.

Judge *Trott.* Did you see the goods taken out?

Killing. I cannot say I saw them all taken out; but I saw them a sharing of them together.

Mr. *Hepworth.* We will call another evidence.

Francis Griffin, Capt. *Read's* mate; who was sworn.

Mr. *Hepworth.* Do you know the prisoners at the bar?—*Griffin.* Yes, Sir.

Mr. *Hepworth.* Please to give an account of the taking the sloop you belonged to.

Griffin. After we were taken, Tucker and some more came on board, and Tucker fell to beating and cutting the people with his cutlash, and cut one man's arm. So then we went to Cape James alias Cape Inlopen, where capt. Manwareing was taken, and thence we sailed for Cape Fear.

Mr. *Hepworth.* Were all these goods mentioned in the Indictment taken out? (That part of the Indictment read.)

Griffin. Yes, Sir.

Judge *Trott.* Did all the prisoners take their shares?

Griffin. I know nothing to the contrary.

Clerk. Will any of you ask the king's evidence any questions?

No Questions asked.

Judge *Trott.* You the prisoners at the bar, what have you to say in your defences? I am now ready to hear you.

Clerk. Edward Robinson, what have you to say?

Robinson. I have nothing to say, more than what I have said.

Clerk. Robert Tucker, what have you to say?

Tucker. I knew nothing but we were going to St. Thomas's, when I engaged with major Bonnet.

Judge *Trott.* You was his quarter-master; and you was the person that cut the man with the cutlash, and abused the people.

Clerk. William Scot, what have you to say?

Scot. I was never on board capt. Read.

Judge *Trott.* You was never on board! What of that? You was one of the crew, and consented to it, and had your share.

Clerk. Job Bayley and Neal Paterson, what have you to say?

Prisoners. We have nothing more to say.

Clerk. John William Smith, what have you to say?

Smith. It was never my design to go a-pirating; and when I was at sea, I could not help what others did.

Judge *Trott.* If it was not your design at first, you afterwards consented to it.

Clerk. Thomas Carman and John Thomas, what have either of you to say?

Prisoners. We have no more to say, than what we have said.

Att. Gen. May it please your honours, I think the evidence have plainly proved the prisoners at the bar guilty of the fact charged upon them in the indictment; so that they were all equally guilty.

Judge *Trott.* Gentlemen of the Jury, the prisoners at the bar stand indicted for felony and piracy, committed on a sloop belonging to capt. Thomas Read: All the evidences fully prove the fact upon them, that they were all equally guilty, and all shared in the goods and plunder; but Tucker abused the people, and cut one man with his cutlash, so that he added barbarity to his other crimes. They all pretend they were under force and constraint; but it is but a suggestion of their own, without the least proof: But there is full proof of their consenting. But I shall leave them to your consideration. But the case is so clear, that I believe you will not be long before you return with your verdict.

Then an Officer was sworn to keep the Jury.

Who after they had considered of their verdict, returned, and found the abovesaid Edward Robinson, Robert Tucker, William Scot, Job Bayley, Neal Paterson, John William Smith, Thomas Carman, and John Thomas, Guilty.

Then the Court proceeded to arraign William Morison, William Livers alias Evis, Samuel Booth, William Hewet, John Levit, William Eddy alias Nedy, Alexander Annand, George Ross, George Dunkin, and Thomas Nichols, upon the following Indictment, for taking capt. Read.

"The Jurors for our sovereign lord the king do upon their oath present, that William Morison late of Jamaica, mariner," &c. (as before.)

Who all pleaded Not Guilty, excepting John Levit, who pleaded Guilty.

Then the Court proceeded on the Trial of those that had pleaded Not Guilty.

And the Jury were sworn whose names are as followeth:

Timothy Bellamy, foreman, &c. (as before.)

Ig. Pell, one of the witnesses against the prisoner, was called and sworn. He, and the rest of the witnesses in general, gave the same evidence against these prisoners, as against the former, only they were more particularly examined as to Thomas Nichols, and George Dunkin.

Mr. *Hepworth.* Ig. Pell, do you know the prisoners at the bar?

Pell. Yes, Sir, I knew them all very well.

Att. Gen. Please to give the Court an account of the taking and plundering capt. Read; and begin with Nichols.

Pell. Thomas Nichols was very much dissatisfied on board, and did not join with the rest of the company, and would not take the share, and said, 'he hoped he should not continue long with them.'

Foreman. Do you know any thing of Dunkin? How did he behave himself?

Pell. I did not see but he was as active as any of the rest, and took his share as the rest did at Cape Fear.

Judge *Trott.* And had all the prisoners their shares?—*Pell.* Yes, excepting Nichols.

Judge *Trott.* Were the goods mentioned in the Indictment taken out of Read's sloop?

Pell. Yes.

Clerk. Will any of you ask the king's evidence any questions?

No questions asked by the prisoners.

Mr. *Hepworth.* We will proceed to call another evidence. Captain Manwareing, do you know the prisoners at the bar?

Manwareing. I know them all very well.

Mr. *Hepworth.* Please to give the Court an account of their sharing captain Read's goods at Cape Fear; and particularly how Nichols behaved himself.

Manwareing. When Nichols was on board my sloop, he said several times, 'he would get clear of them the first opportunity, and he hoped it would not be long first;' and when major Bonnet sent for all hands on board the Revenge, he refused to go, till he sent word, 'if he would not come, he would make him;' and when he went, he said, 'before he would fight, he would die:' and he always kept himself from the company, and from their cabals.

Judge *Trott.* Do you know any thing of Dunkin?

Manwareing. What I can say is, there was some brown bread upon deck, and he said, 'it was fit for nothing but negroes to eat;' and I told him, I wished he might never want it. So they went, and brought some whiter out of the hole.

Mr. *Hepworth.* How did he behave himself?

Manwareing. I saw nothing but he was as the rest were.

Mr. *Hepworth.* Would any of you ask the king's evidence any questions?

No questions asked by the prisoners.

Mr. *Hepworth.* Please your honours, we proceed to call another evidence.

James Killing sworn.

Mr. *Hepworth.* Do you know the prisoners at the bar?

Killing. I know them all very well.

Mr. *Hepworth.* Please to give the Court an account of what you know of their taking and plundering captain Read; and first begin with Nichols.

Killing. I remember when he was on board our sloop, and major Bonnet sent for him, when he went off, he said, 'he hoped to get clear of them, and he would die before he would fight.'

Judge *Trott.* Pell, do you know whether he did fight col. Rhett, or not?

Pell. He did not fight; and if one that major Bonnet loved very well had not been shot down by his side, he had blowed his brains out; for he had his pistol ready.

Mr. *Hepworth.* How did Dunkin behave himself?

Pell. I can say nothing for any of the rest, but that they were all as one, and had all their shares.

Clerk. Would any of you ask the king's evidence any questions?

No questions asked by the prisoners.

Mr. *Hepworth.* We will proceed to call another evidence. Captain Thomas Read, do you know the prisoners at the bar?

Read. I know them all very well.

Mr. *Hepworth.* Please to give the Court an account of what goods were taken from you, and how the prisoners behaved themselves; and first of Nichols.

Read. The most of the time he was on board captain Manwareing's sloop, I heard him say, 'he did not like that course of life;' and the last words I heard major Bonnet say to him, was, 'that he would force no man to go against his will.'

Judge *Trott.* Can you say any thing of Dunkin?

Read. As for Dunkin, I did not see but he acted as the rest did.

Dunkin. Captain Read, it was against my will.

Mr. *Hepworth.* Captain Read, were these goods taken out of you, as are mentioned in the Indictment?—(That part of the Indictment read.)—Were all these goods taken out?

Read. Yes.

Clerk. Will any of you ask any questions? George Dunkin, will you ask any questions?

Dunkin. Captain Read, when did you see me as active as any of the rest?

Read. Before captain Manwareing was taken, I thought you had been a prisoner; but afterwards I saw no difference.

Judge *Trott.* You was one of Bonnet's crew, one of that company.

Mr. *Hepworth.* We proceed to call another evidence.

Francis Griffin, Capt. Read's Mate, sworn.

Mr. *Hepworth.* Do you know the prisoners at the bar?—*Griffin.* I know them all.

Mr. *Hepworth.* Give an account of what you know of Nichols, and the rest of the prisoners.

Griffin. As for Nichols, he was a man I know nothing of, he being on board of Manwareing's sloop.

Mr. *Hepworth.* What do you know of Dunkin?

Griffin. I knew nothing of him till we were come to Cape Fear; and I saw no difference, but he shared among the rest.

Mr. *Hepworth.* Were those goods taken out of the sloop, the goods mentioned in the indictment?—*Griffin.* Yes, Sir.

Judge *Trott.* Now you the prisoners, what you have to say in your defence I shall be ready to hear.

Clerk. William Morrison, what have you to say?

Morrison. I have no more to say than I have said already.

Clerk. William Livers alias Evis, what have you to say?—*Evis.* Nothing more.

Clerk. Samuel Booth.

Booth. When I went on board major Bonnet, it was to go to St. Thomas's with him.

Judge *Trott.* Why had you not continued at North Carolina, since you could not continue here?

Booth. I thought to have had better business there.

Clerk. John Levit, William Eddy alias Nedy, Alexander Annand.

Prisoners. We were forced to go, and did not know what they would do.

Att. Gen. But did you not know what you did when you shared? You knew that did not belong to you, did you not?

Clerk. George Ross, George Dunkin, Thomas Nichols, asked no questions; only Dunkin delivered in a paper, which was read in court, and contained a testimony of his former behaviour, when in Scotland.

Att. Gen. Please your honours and you gentlemen of the Jury, I think it appears from the evidence, that Nichols was under constraint, and forced. As for Dunkin and the rest, they all took their shares at Cape Fear.

Judge *Trott.* Gentlemen of the Jury, the prisoners at the bar stand indicted for felony and piracy committed on a sloop belonging to captain Thomas Read. As for Nichols, Pell says, that he was not joined to the company, and said, 'As for his share they might do what they pleased, for he hoped he should not be with them long:' and when major Bonnet sent for him on board, he refused to fight col. Rhett; and if another had not been killed, major Bonnet had blown his brains out. Captain Manwareing says, he refused his share, and kept himself from the company and from their cabals; and he said, when sent for on board, 'that he would die before he would fight.' And captain Read says, that major Bonnet said, 'that he would put him ashore, for he would force no man against his will.' And Killing says that he told him, 'that he would not fight col. Rhett,' when major Bonnet sent for

him on board the Revenge. So that I think it plainly appears he was under constraint. But for Dunkin, he says of himself indeed that he was a prisoner, and under constraint; but Pell says he was not, and that he took his share, and was as the rest were. And captain Manwareing says, that he complained of the bread, that it was fit for none but negroes: so I shall leave you to consider that. As for the rest, they have but little to say in their defence, and I think the evidence have proved the fact fully upon them. But I shall leave this to your consideration; and remember you have the lives of these persons in your hands.

Then the officer was sworn to keep the Jury:

Who after they had considered of their verdict, returned and found the abovesaid William Morrison, William Livers alias Evis, Samuel Booth, William Hewit, William Eddy alias Nedy, Alexander Annand, George Ross and George Dunkin, Guilty; and Thomas Nichols, Not Guilty.

Then the Court adjourned till Monday morning.

Monday, Nov. 3, 1718.

The Court met according to adjournment.

Then the Court proceeded to arraign John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins alias Rattle, James Mullet alias Millet, Thomas Price, James Wilson, John Lopez, and Zachariah Long, upon the following Indictment for taking captain Read.

"The jurors for our sovereign lord the king do, upon their oaths, present, that John Ridge, late of London, mariner, &c. as before."

To which Indictment John Ridge, Matthew King, Henry Virgin, James Robbins alias Rattle, James Mullet alias Millet, Thomas Price, John Lopez, and Zachariah Long, pleaded Not Guilty: and Daniel Perry and James Wilson pleaded Guilty.

Then the Court proceeded upon the trial of those that had pleaded Not Guilty.

And the Jury were sworn, whose names are as followeth:

Samuel Proileau, foreman, John Hodgson, Garrat Vanvelsin, Lucas Stoutenborough, Joshua Mariner, Thomas Fairchild, Henry Genelac, Benjamin Griffin, Charles Marche, John Grimball, Nicholas Stephens, William Harvey.

The witnesses against the prisoners were the above-named,

Ignatius Pell, captain Peter Manwareing, captain Thomas Read, James Killing and Francis Griffin.

Who gave the same evidence against these prisoners as those tried before.

And fully proved upon them all the fact of piratically taking captain Read.

Only the witnesses were more particularly examined as to James Robbins alias Rattle, who upon a former Indictment for taking captain Manwareing was acquitted.

Att. Gen. Ignatius Pell, give an account of James Robbins.

Pell. He was as the rest were when we shared at Cape Fear.

Judge *Trott.* How long was he with you before he joined himself to the company, after he came on board?

Pell. As soon as we came to Cape Fear.

Att. Gen. Did you see Robbins have his share?

Pell. Yes, Sir, they had all their shares.

Att. Gen. Was Robbins on board Read's sloop?

Pell. I cannot tell whether he was on board or not.

Judge *Trott.* You looked upon him as one of the company?—*Pell.* Yes.

Captain *Manwareing* sworn.

Mr. *Hepworth.* Please to begin with Robbins, how he behaved himself.

Manwareing. He was as the rest of the men were: he was on board the Revenge, and I think they called him James Rattle sometimes.

Judge *Trott.* Did he receive his share?

Manwareing. He was among the company when they did share.

James Killing called and sworn.

Mr. *Hepworth.* Give an account of Robbins.

Killing. All I can say, he was as the rest were in sharing captain Read's goods, and was amongst them when they did share.

Captain *Read* sworn.

Mr. *Hepworth.* Give an account of Robbins.

Read. I did not know him before we came to Cape Fear; but I did not see but he was as active there in taking out the goods as any of the rest.

Judge *Trott.* Did he share among the rest?

Read. Yes, I believe he did, for he was among them when they shared.

Robbins. I was forced to do what I did.

Judge *Trott.* Did they force you to take your share?

Francis Griffin called and sworn.

Mr. *Hepworth.* Give an account of Robbins.

Griffin. I did not know him till we came to Cape Fear, and there I saw him on board the Revenge; and I did not see but that he did as the rest of the company; and when they were sharing he was with them, and received his share.

Clerk. What have you to say, Robbins?

Robbins. I never was on board captain Read.

Judge *Trott.* But you was one of the company.

Robbins. I never consented to take out the goods.

Judge *Trott*. But you consented to take part of them; and they that shared the goods were as much pirates as those that took them out of the vessel.

Then the Judge summed up the evidence.

And an officer was sworn to keep the Jury.

Who after they had considered of their verdict, returned and found the said John Ridge, Matthew King, Thomas Price, Henry Virgin, James Robbins alias Rattle, James Mullet alias Millet, John Lopez, and Zachariah Long, Guilty.

The Court then delivered a Bill of Indictment to the grand jury, against John Brierly alias Timber-head, Robert Boyd, Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, for feloniously and piratically entering the sloop Francis belonging to captain Peter Manwareing the commander, and taking certain goods out of the same at Cape Fear.

And another Bill of Indictment against the same persons for feloniously and piratically entering the sloop Fortune belonging to captain Thomas Read commander, and taking certain goods out of the same at Cape Fear.

The grand jury returned upon the said Bills of Indictment *Bills vera.*

Then the Court proceeded to arraign the said John Brierly alias Timber-head, Robert Boyd, Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, upon the following Indictment:

"The jurors for our sovereign lord the king do, upon their oath, present, that John Brierly alias Timber-head, late of Bathtown in North Carolina, mariner; Robert Boyd, late of Bathtown aforesaid, mariner; Rowland Sharpe, late of Bathtown, mariner; Jonathan Clarke, late of Charlestown, in the province of South Carolina; and Thomas Gerrard, late of Antigua, mariner; the 27th day of September, in the fifth year of the reign of our sovereign lord George, by the grace of God, of Great Britain, France, and Ireland king, defender of the faith, &c. by force and arms, upon the high sea, in a certain place called Cape Fear, about half a mile distant from the shore, in the latitude of thirty-four, or thereabouts, and within the jurisdiction of the Court of Vice-Admiralty of this province of South Carolina, did piratically and feloniously set upon, board, break, and enter a certain merchant sloop called the Francis, captain Peter Manwareing commander, then being a sloop of certain persons, (to the jurors aforesaid unknown) and then and there piratically and feloniously did make an assault in and upon the said Peter Manwareing, and other his mariners (whose names to the jurors aforesaid are unknown) in the same sloop, in the peace of God, and our sovereign lord the king, then and there being, piratically and feloniously did put the aforesaid Peter Manwareing, and others his mariners of the same sloop, in the sloop aforesaid then being, in corporal fear of their lives; then and there in the sloop aforesaid, upon the high sea, in the place aforesaid, called Cape Fear, about half a mile distant from the shore, in the latitude of thirty-four, and within the jurisdiction aforesaid, piratically and feloniously did steal, take and carry away the said sloop Francis, and also six hogsheads of rum of the value of eight pounds current money of the island of Barbadoes, and one tierce of sugar of the value of seven pounds current money of the island of Antigua, the goods and chattels of certain persons (to the jurors aforesaid unknown) then and there upon the high sea aforesaid, in the place aforesaid called Cape Fear, about half a mile distant from the shore, in the latitude of thirty-four, or thereabouts, as aforesaid, and within the jurisdiction aforesaid, being found in the aforesaid sloop in the custody and possession of the said Peter Manwareing, and other his mariners of the sloop aforesaid; and from their custody and possession, then and there upon the high sea aforesaid, and in the place aforesaid, called Cape Fear, about half a mile distant from the shore, in the latitude of thirty-four or thereabouts, as aforesaid, and within the jurisdiction aforesaid, against the peace of our said now sovereign lord the king, his crown and dignity, &c.

To which Indictment they all pleaded Not Guilty.

Then the Court proceeded upon their trial.

The jurors were sworn, whose names were as followeth:

Timothy Bellamy, foreman; George Docket, John Rivers, William Sheriffe, Benjamin Dennis, Hugh Durfey, Thomas Chambers, Daniel Townshend, John Lee, Thomas Bee, John Barton, and Richard Fairchild.

Then the witnesses were ordered to be called.

Clerk. Call Ignatius Pell, who was sworn.

Mr. *Hepworth*. Pell, do you know the prisoners at the bar?

Pell. I know them all very well.

Mr. *Hepworth*. Please to give an account of what you know of them, and of their behaviour at Cape Fear.

Pell. John Brierly and Robert Boyd came on board three or four days after we came to Cape Fear.

Judge *Trott*. You took them first, did you not?

Pell. Yes: we sent off our dory, and took them.

Judge *Trott*. From whence did they come?

Pell. From North Carolina.

Att. Gen. How long after they came on board did they join themselves to the company?

Pell. Brierly did very soon, but Boyd did not so soon, though he did afterwards; and for Sharpe, I do not know that ever he was joined to the company.

Judge *Trott*. And how did Clarke behave himself?

Pell. Jonathan Clarke and one ..... came

in from South Carolina: they went away from the sloop; and then after some days Clarke returned again, but it was with hunger, though he said then it was not.

Att. Gen. Were there any goods taken out of capt. Read's sloop after he had joined himself a second time?

Pell. I cannot say that certainly.

Judge *Trott.* Nor you cannot say positively there were?—*Pell.* No.

Mr. *Hepworth.* What do you know of Gerrard?

Ig. Pell. I can say nothing to him.

Clerk. Will any of you ask the evidence any questions? John Brierly, will you ask any questions?

Brierly. Pell, you know I often said I would not bear arms, and that I desired no share.

Pell. But John, you know you had your arms ready as well as the rest, and that you had your share.

Clerk. Robert Boyd, will you ask any questions?—*Boyd.* No, Sir.

Clerk. Rowland Sharp, will you?

Sharp. No, Sir.

Clerk. Jonathan Clarke, will you ask any questions?

Clarke. Pell, do not you remember that I was abaft, and one of the negroes came and damned me, and asked me what I did there? why I did not go and work amongst the rest? and told me I should be used as a negroe.

Pell. I do remember it was so.

Mr. *Hepworth.* We proceed to call another evidence.

Capt. *Thomas Read* sworn.

Att. Gen. Capt. Read, please to begin with Brierly.

Read. Brierly came on board one morning very early, and helped to take out several goods.

Mr. *Hepworth.* Do you know what goods?

Read. Some rum and sugar.

Judge *Trott.* Do you know those goods to be taken out?—*Read.* Yes.

Judge *Trott.* How did he behave himself when major Bonnet sent for him on board to fight colonel Rhett?

Read. I cannot tell.

Mr. *Hepworth.* How did Boyd behave himself?

Read. I took him to be a prisoner like myself at first, till he was sent for on board the Revenge by major Bonnet to fight colonel Rhett.

Att. Gen. What made you think he was a prisoner?

Read. Because he was not employed in any business, as the rest were.

Judge *Trott.* That day they engaged colonel Rhett, was he on board your sloop?

Read. Yes, and major Bonnet sent for all hands on board the Revenge.

Att. Gen. What do you say of Sharp?

Read. I can say nothing of him.

Att. Gen. What have you to say of Clarke?

Read. He run away for a time, and then he returned again after some days.

Att. Gen. Was there any goods taken out after he returned?—*Read.* Yes, Sir.

Judge *Trott.* Did Clarke himself take out those goods?

Read. That I cannot tell; and as for Gerrard, he belonged to capt. Manwareing: and as the captain and I was together, he came and told us how they used him; but he was sorry for what he had done, and was resolved to make his escape the first opportunity he had to get away.

Clerk. Have any of you any questions to ask the king's evidence?

The prisoners ask no questions.

Mr. *Hepworth.* We proceed to call another evidence.

Francis Griffin sworn.

Mr. *Hepworth.* Look upon the prisoners; do you know them?

Griffin. I know them all.

Mr. *Hepworth.* Begin with John Brierly.

Griffin. He was on board of us some time when we were at Cape Fear, and he was as the rest of the company was; and he said he hoped when major Bonnet should go to the northward, to be revenged on some at the Hore-kills, for some offence they had given him there.

Judge *Trott.* You looked upon him as one of the crew?—*Griffin.* Yes.

Judge *Trott.* What do you know of Boyd?

Griffin. He was on board of us some time; and when major Bonnet sent for all hands on board the Revenge, he went with them: but as for Sharp, I can say nothing of him, nor of Clarke, only he run away, and in some days he returned again.

Mr. *Hepworth.* We shall call another evidence.

Capt. *Peter Manwareing* sworn.

Mr. *Hepworth.* Capt. Manwareing, do you know the prisoners at the bar?

Manwareing. I know them all very well.

Mr. *Hepworth.* Please to give the Court an account of what you know of them; and begin with Brierly.

Manwareing. Brierly, the 19th day of August he came on board; and a little after he was on board, I did not see but he acted as the rest did, and he hoped to come up with some at the Hore-kills: but as for Boyd, he was on board capt. Read's sloop.

Judge *Trott.* What have you to say of Sharp?

Manwareing. Some time after he came to cape Fear, and major Bonnet sent for him on board the Revenge, he said he would go on shore if he had an opportunity, and I never saw him among the rest of the company.

Judge *Trott.* What have you to say of Jonathan Clarke?

Manwareing. After we had been at Cape Fear some days, Jonathan Clarke, and one Dolton, came in, and major Bonnet sent the

dory, and brought them on board; and after some days, Clarke and ——— went away, and was gone some days, and then returned again, and then he was ordered to work among the negroes. As for my man Gerrard, he came and told me, he was not able to bear any longer, but was forced to comply with them, for they told him they would have no regard for the colour, but would make a slave of him; but he did not receive any of their goods; and when he was at home, he had the character of an honest man, and fought for his king and country.

Mr. *Hepworth.* We will call another evidence.

James Killing sworn.

Mr. *Hepworth.* Do you know the prisoners at the bar?

Killing. I know them all very well.

Mr. *Hepworth.* Give the Court an account of what you know of their sharing at Cape Fear.

Killing. Brierly was put on board our sloop there to work at his trade, and would often say, he had a quarrel against some at the Hore-kills, he hoped to revenge himself upon them.

Judge *Trott.* Why, what had they done to him?

Killing. He was in debt, and therefore he owed them a grudge; but for the rest I can say nothing.

Judge *Trott.* You the prisoners, what have you to say in your defence? I shall now be ready to hear.

Clerk. John Brierly, what have you to say?

Brierly. Mr. Boyd and I was in a leaky canoo, and we were afraid she would sink, and so we were obliged to keep along shore; and I stood up, and thought I saw a vessel or two, and he bid me look again, and then I saw it was a vessel. They sent off their dory, and asked if we would consent to go with them? And we said, No: But they said they would break the canoo, and we might go where we pleased. So they made me consent to go on board the Revenge, but I never joined myself while I was on board: And then I was ordered on board captain Manwareing, and there I worked; but I never bore arms, nor did fight colonel Rhett.

Clerk. Rowland Sharp, what have you to say?

Sharp. After I was taken, I went on shore, and travelled four days in the woods without eating or drinking, and could find the way to no plantation, and so was forced to return again, and I refused to sign the articles; and one of the men came and told me I was to be shot, and I had the liberty to chuse the four men that should do it, and the boatswain went about to get hands to beg me off; but I was resolved to make my escape the first opportunity.

Clerk. Jonathan Clarke, what have you to say?

Clarke. The 12th of August, coming into Cape Fear with Mr. Dolton, he thought he saw the mast of a vessel, and I desired him to take the helm that I might see, for if there was any vessel it was pirates; but Dolton said it was nothing but an old tree: But when we came farther in, we saw three sloops, and they sent off their dory and took us, and carried us aboard the Revenge: and major Bonnet asked us from whence we came? and I told him. He asked me where we were a going? we told him. The next day he asked if I did not design to do as they did? I told him no. Then I went away with a design to get clear of them, but with hunger was forced to return again: And they asked me if I would sign the articles then? and I refused; and one of the negroes came and damned me, and asked me why I did not go to the pump, and told me that was my business: And major Bonnet told me, if I did not he would make me governor of the first island he came to; for he would put me ashore and leave me there.

Clerk. Thomas Gerrard, what have you to say?

Gerrard. Some time after we were taken, one of the men came and asked if I would join with them? I told him, No. He said, I was but* like a negroe, and they made slaves of us all of that colour, if they did not join. So I did it with a design to get clear of them the first opportunity; and I never shared any of the goods.

Judge *Trott.* Pell, did he never share?

Pell. He never did share.

Judge *Trott.* And did they threaten to make a slave of him, if he did not join?—*Pell.* Yes.

Att. Gen. May it please your honours, and you the gentlemen of the jury, as for Brierly and Boyd, it appears from the evidence that they came to Cape Fear three or four days after Bonnet: Brierly he took up very soon, and Boyd some time after; and that there were several goods taken out of captain Manwareing's sloop, and particularly rum and sugar. And as for Sharp, there is no evidence proves any thing fully on him; and therefore I think he may be looked upon as under constraint and force. As for Gerrard, I think the same; for though he signed the articles, yet no evidence proves that he did share any of the goods: Nay, the boatswain says he did not share; and if they did not comply with them, they would make a slave of him all the days of his life. And capt. Manwareing says he had the character of an honest man at home; and that he fought for his king and country.

Judge *Trott.* Gentlemen of the Jury, the prisoners at the bar stand charged with piracy, committed on a sloop belonging to captain Manwareing; and the evidence have proved it fully upon Brierly and Boyd; and particularly, that there was rum and sugar taken out. Brierly took up very soon with them, and had his share; and that he hoped to revenge himself on some at the Hore-kills. Boyd did not take up so soon; but he did afterward. As for Sharp, he would have made his escape, but could not; and major Bonnet told him he

* He was a Mulatto.

should die, and bid him chuse four men to shoot him; and though he signed the articles, he never shared, as Pell proves. As for Clarke, he says he was forced to it; that he went away, and hunger forced him to return again, and the negroes insulted over him; and major Bonnet told him, he would make him governor of an island, and leave him there; and none of the evidence proves that he shared any of the goods. And as for Gerrard, he was threatened to be made a slave of; though indeed he had been better made a slave than go a pirating: But captain Manwareing says he had the report of an honest man in his country; and that he was faithful to his king and country: So I shall leave those to your consideration. And if you think they were under force and constraint, as indeed it appears to me, by the whole course of the evidence, that they were, then you ought to acquit them.

Then an Officer was sworn to keep the Jury,

Who, after they had considered of their verdict, returned, and found John Brierly alias Timberhead, and Robert Boyd, Guilty; Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, Not Guilty.

Then the Court adjourned till Tuesday morning.

Tuesday, Nov. 4, 1718.

The Court met according to adjournment.

Then the Court proceeded to arraign the said John Brierly alias Timberhead, Robert Boyd, Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, upon the following indictment.

"The jurors for our sovereign lord the king do upon their oath present, that John Brierly alias Timberhead, late of Bath-Town in North Carolina, mariner; Robert Boyd, late of Bath-Town aforesaid, mariner; Rowland Sharp, late of Bath-Town aforesaid, mariner; Jonathan Clarke, late of Charles Town, in the province of South Carolina, mariner; and Thomas Gerrard, late of Antegoa, mariner; the 27th day of September, in the 5th year of the reign of our sovereign lord George, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. by force and arms, &c. upon the high sea, in a certain place called Cape Fear, about half a mile distant from the shore, in the latitude of 34° or thereabouts, and within the jurisdiction of the Court of Vice-Admiralty of South Carolina, did piratically and feloniously set upon, board, break, and enter a certain merchant sloop, called the Fortune, Thomas Read commander, then being a sloop of certain persons (to the jurors aforesaid unknown) and then and there piratically and feloniously did make an assault in and upon the said Thomas Read, and other his mariners (whose names to the jurors aforesaid are unknown,) in the same sloop, against the peace of God, and of our now sovereign lord the king, then and there being, piratically and feloniously, did put the aforesaid Thomas Read, and others his mariners of the same sloop, in the sloop aforesaid then being, in corporal fear of their lives, then and there in the sloop aforesaid, upon the high sea, in the place aforesaid, called Cape Fear, about half a mile distant from the shore, in the latitude of 34°, or thereabouts, and within the jurisdiction aforesaid, piratically and feloniously did steal, take, and carry away the said sloop Fortune, and also 10 barrels of pork, of the value of 20*l.*, current money of Pensylvania; 2 firkins of butter, of the value of 50*s.*, like current money of Pensylvania; and 3 tierces of bread, of the value of 6*l.* 10*s.*, like current money of Pensylvania; the goods and chattels of certain persons (to the jurors aforesaid unknown) then and there, upon the high sea aforesaid, in the aforesaid place, called Cape Fear, about half a mile distant from the shore, in the latitude of 34°, or thereabouts, as aforesaid, and within the jurisdiction aforesaid; being found in the aforesaid sloop, in the custody and possession of the said Thomas Read, and others his mariners of the sloop aforesaid, and from their custody and possession, then and there, upon the high sea aforesaid, in the place aforesaid, called Cape Fear, about half a mile distant from the shore, in the latitude of 34° or thereabouts, as aforesaid, and within the jurisdiction aforesaid, against the peace of our said now sovereign lord the king, his crown and dignity," &c.

Who all pleaded Not Guilty.

Then the Court proceeded upon their Trial.

The Jurors were sworn, whose names are as followeth: Samuel Proileau, foreman, John Hodgson, Garrat Vanvelsin, Lucas Stoutenborough, Joshua Mariner, Thomas Fairchild, Henry Genelac, John Ballentine, Charles Marche, John Grimball, Nicholas Stephens, William Harvey.

Then the Witnesses were ordered to be called.

Clerk. Call Ignatius Pell. Who was sworn.

Mr. *Hepworth.* Pell, give an account first of Brierly and Boyd.

Pell. As for Brierly, he soon united himself to the company; and when we engaged colonel Rhett, he was as active as any of the rest. But for Boyd, he was sent on board captain Read's sloop, and was there till major Bonnet sent for him on board the Revenge, to fight colonel Rhett.

Judge *Trott.* And did he fight?

Pell. He was wounded with one of the first shot, and so was carried down into the hole; so that he never did fight.

Mr. *Dean.* Why was he put on board the sloop?

Pell. To look after the sloop, I suppose.

Att. Gen. Had he his arms ready when you engaged colonel Rhett?

Pell. Yes, Sir: So we had all in general: But I did not see him use them.

As for the other three, he thought them to be

under constraint, and they did not fight colonel Rhett.

Clerk. Will any of you ask the king's evidence any questions?

No questions asked by the prisoners.

Mr. *Hepworth.* We proceed to call another evidence.

Captain *Peter Manwareing* sworn.

Mr. *Hepworth.* Captain Manwareing, give an account of the prisoners of their fighting colonel Rhett, and begin with Brierly and Boyd.

Manwareing. They came on board, and Brierly soon became one of the company, and hoped to revenge himself on them at the Hore-kills, and acted as the rest did when they engaged colonel Rhett. But as for Boyd, I took him to be a prisoner for some time.

Captain Manwareing's evidence concerning Sharpe, Clarke, and Gerrard, the same as in the former trial.

Mr. *Hepworth.* Will any of you ask the king's evidence any questions?

No questions asked by the prisoners.

Mr. *Hepworth.* We will call another evidence.

James Killing sworn.

Mr. *Hepworth.* Give an account of the prisoners at the bar; and first of Brierly and Boyd.

Killing. As for Boyd, he was on board captain Read after we came to Cape Fear, till they were sent for to fight colonel Rhett; and I thought he had been a prisoner till then, and I talked very free to him. And as for Brierly, he was as the rest of the company.

Att. Gen. Were there any goods taken out after Brierly came on board?—*Killing.* Yes.

Mr. *Hepworth.* Do you know what goods?

Killing. I cannot remember every particular sort.

His Evidence against the other three the same as in the former Trial.

Clerk. Will any of you ask the king's evidence any questions?

No questions asked by the prisoners.

Mr. *Hepworth.* We will call another evidence.

Captain *Thomas Read* sworn.

Mr. *Hepworth.* Captain Read, please to give an account of the prisoners at the bar; and first, of Brierly and Boyd.

Read. As for Brierly, I did not see but he acted as all the rest of the company did.

Judge *Trott.* What have you to say of Boyd?

Read. I thought him to be a prisoner, and discoursed freely with him, which if he had discovered, it had done me an injury; for I heard him wish we might meet with a 30 gun ship, and I told him I should be glad of it as well as he.

Foreman. What did he wish to meet with a 30 gun ship for?

Read. To free us from the pirates.

His Evidence against the other three the same as before.

Clerk. Will any of you ask the king's evidence any questions?

None of the prisoners asked any questions.

Judge *Trott.* You the prisoners may now speak what you have to say.

Clerk. What have you to say, John Brierly?

Brierly. When Mr. Boyd and I came in at Cape Fear, we saw three sloops; and then came off a dory with some hands, and hailed us, and then carried us on board; but we did not know that they were marrooners. But Mr. Boyd trembled and shook like a leaf; and I told him not to be afraid. So they carried us on board.

Judge *Trott.* And so you united yourself with them to make up the company?

Brierly. I was forced to do what I did.

Clerk. Robert Boyd, what have you to say?

Boyd. After we came to Cape Fear, and was taken by Bonnet's men, I was on board the Revenge for some time, and they asked me to sign the Articles, the which I refused; and major Bonnet told me, if I did not, he would maroon me on an island, and leave me. And after I was sent on board capt. Read's sloop, I had nothing but the provisions I lived on; I never had any thing more. And when major Bonnet sent for all on board to fight colonel Rhett, it would have been present death for any to refuse, and I was wounded with one of the first shot.

(The other three made it appear they were innocent, as in the other Indictment.)

Att. Gen. May it please your honours, and you the gentlemen of the jury, the evidence proves the fact fully on Brierly; that he soon engaged with Bonnet after he was taken, and that he acted as the rest of the company did; and that he hoped to be revenged on some of the Hore-kills. As for Boyd, though he was on board the pirate-sloop, he never took part with them; and he wished for a 30 gun ship, that they might be set at liberty. And capt. Read took him for a prisoner, till he was sent for on board the Revenge; and then the boatswain says he did not fight. As for the other three, I think it appears they were under constraint and force.

Judge *Trott.* Gentlemen of the Jury, the prisoners at the bar stand indicted for piratically taking capt. Read, in the sloop Fortune. As for Brierly, the evidence proves it very plain and fully upon him, that he took up very soon with them, and did hope to revenge himself upon some of the Hore-kills, and that he engaged against col. Rhett. As for Boyd, capt. Read looked upon him as a prisoner; and that

he had such discourse with him, that if he had disclosed it to Bonnet's crew, it had done him much hurt; and the boatswain says, he did not fight col. Rhett. And as for the other three, I think it hath been fully proved they were under constraint. But I shall leave it to your consideration.

Then an Officer was sworn to keep the Jury.

Who after they had considered of their Verdict, returned, and found John Brierly alias Timberhead, Guilty; Robert Boyd, Rowland Sharp, Jonathan Clerke, and Thomas Gerrard, Not Guilty.

Then the Court adjourned till Wednesday morning.

Wednesday, Nov. 5, 1718.

The Court met according to adjournment.

Then Robert Tucker, Edward Robinson, Neal Paterson, William Scot, Job Bayley, John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers alias Evis, Samuel Booth, William Hewet, John Levit, William Eddy alias Nedy, Alexander Annand, George Ross, George Dunkin, John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet alias Millet, Thomas Price, John Lopez, Zachariah Long, James Wilson, John Brierly alias Timberhead, and Robert Boyd, who stood convicted of piracies, as appears by the above records, were brought to the bar, and were severally asked what they could say why judgment of death should not pass upon them?

And they having nothing to allege in arrest of judgment;

Then proclamation for silence was made, while the Judge of the Court of Vice Admiralty pronounced sentence of death upon the prisoners.

Judge *Trott*. You the prisoners at the bar, Robert Tucker, Edward Robinson, Neal Paterson, William Scot, Job Bayley, John William Smith, Thomas Carman, John Thomas, William Morrison, William Livers alias Evis; Samuel Booth, William Hewet, John Levit, William Eddy alias Nedy, Alexander Annand, George Ross, George Dunkin, John Ridge, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet alias Millet, Thomas Price, John Lopez, Zachariah Long, James Wilson, John Brierly, and Robert Boyd, stand here convicted of piracy.

You have been indicted but for two acts of piracy; but you know upon the trials it was fully proved against most of you, that you piratically took thirteen vessels since you joined major Bonnet, and sailed from Topsail Inlet in North Carolina.

So that many of you might have been convicted on eleven more indictments of piracy.

Besides several of you were proved to be pirates before that time, as belonging to Thatch's crew; and so were guilty of the several piracies committed while you belonged to him.

You cannot but acknowledge that you have all of you had a fair and indifferent trial.

You were fully heard, not only as to all you could pretend to say in your own defences, but also as to what you allege in mitigation of your crimes.

And indeed when you saw that the facts laid in the indictment were so fully proved against you, though most of you pleaded Not Guilty for form sake, yet in the open Court, upon your trials, most of you acknowledged the facts charged upon you. Therefore no one can think but that you were all of you justly found Guilty; and your own consciences will oblige you to acknowledge the same. So that there is not any of you who can complain of any hardships at your trials.

As to the crime that you are convicted of, which is piracy, the evil and wickedness of it is evident to the reason of all men. So that it needs no words to aggravate the same: it is so destructive of all trade and commerce between nation and nation, that pirates are called enemies to mankind, with whom no faith nor oath ought to be kept; and they are termed in our law brutes and beasts of prey, and therefore it is the interest, as well as duty, of all governments to bring such offenders to punishment.

Though the greatness of your crime is such, that no one can think but that the sentence of death which will now be passed upon you is justly due to you for the same; yet as pity and compassion, even to the worst of criminals, when brought to punishment, are natural to all men who have not flung off all sense of humanity, but much more firmly ingrafted in the hearts of Christians; therefore surely it cannot but be a very melancholy spectacle to see so many persons in the prime of their years, in perfect health and strength, dropping into the grave? And which is a more sorrowful consideration, that they are in the height of their sins; and therefore, without the infinite mercies of God, through the satisfaction of Christ, must necessarily sink into the dwellings of everlasting misery.

And indeed, most sad and deplorable is the condition you have brought yourselves to: to be adjudged by the laws of your country unworthy any longer to live, and to tread the earth, or breathe the air; and that no further good or benefit can be expected from you but by the example of your deaths; and to stand like marks or fatal rocks and sands, to warn others from the same shipwreck and ruin for the future.

As most of you have been mariners by profession, and every one of you have several times been at sea; so I cannot but wonder, that being so often at sea, you should not consider the great power of God in creating the same, and his providence in preserving those who pass upon it; and consequently, that such thoughts should not cause in you a dread of his power, and a love of his goodness.

The consideration of God's power in making the sea, and setting bounds to the raging waters thereof, is used as an argument by God himself, why men should fear him; for thus God expresseth it by the prophet Jeremiah: "Fear ye not me? Saith the Lord: will ye not tremble at my presence, which have placed the sand for the bound of the sea by a perpetual decree, that it cannot pass it; and though the waves thereof toss themselves, yet can they not prevail: though they fear, yet can they not pass over it;" Jer. v. 22. Or as it is expressed in the book of Job: "Hitherto shalt thou come, but no farther; and here shall thy proud waves be stayed;" Job xxxviii. v. 11.

The Psalmist saith, that "they that go down to the sea in ships, that do business in great waters; these see the works of the Lord, and his wonders in the deep. For he commandeth and raiseth the stormy wind, which lifteth up the waves thereof. They mount up to the heaven, they go down again to the depths, their soul is melted because of trouble. They reel to and fro, and stagger like a drunken man, and are at their wits end. Then they cry unto the Lord in their trouble, and he bringeth them out of their distresses. He maketh a storm a calm, so that the waves thereof are still. Then they are glad because they be quiet; so he bringeth them unto their desired haven." But the practical inference that he draws from these is, "That men should praise the Lord for his goodness, and for his wonderful works to the children of men;" Psal. cvii. v. 23, 24, 25, 26, 27, 28, 29, 30, 31.

But instead of having a sense of God's power and goodness, in preserving you and others upon the sea, your frequent preservations hardened you into a contempt of the danger you were in; and you thereby slighted your deliverance. And though you could not but see the many natural dangers that attend the seas, and those who had occasion to go upon the same, yet you were resolved that you would contribute what in you lay to the hazards thereof, by the frequent rapines and murders which you committed. So that what the Prophet saith of the pride of the Tyrians, may be applied to you, "That you caused your terror to be on all that haunt the sea;" Ezek. xxvi. v. 17.

Although it may be, while you were in your seeming prosperity, and went on in your committing "Spoils and robberies without controul, you might make a mock at your sins," Prov. xiv. v. 9, and ch. x. v. 23, and "say in your hearts, God hath forgotten, he hideth his face, he will never see it;" Psal. x. v. 11; xciv. v. 7; lxiv. v. 5, and Job xxii. v. 13, yet now that you see that God's hand hath reached you, and his power hath brought you to public justice; I hope your present unhappy condition hath had a good effect upon you, that it hath raised in you more serious thoughts; and that you are now sensible of the greatness of your sins, and that you will sincerely repent you of the same.

As to the great evil and sinfulness of the facts you have committed, surely you cannot but know, that it is one of the express commandments of God, "Thou shalt not steal," Exod. xx. v. 15, and the apostle St. Paul expressly affirms, that "thieves shall not inherit the kingdom of God," 1 Cor. vi. v. 10.

But then remember that to theft you have added the sin of murder, in destroying those persons who were sent by lawful authority to suppress you, and to put a stop to your wicked actions. For you being no way authorized to use the sword, or to fight any one, every one of those persons who fell by your hands, were murdered; and their blood now cries for vengeance against you: for it is the voice of nature, as well as the revealed law of God, that "Whoso sheddeth man's blood, by man shall his blood be shed," Gen. ix. v. 6.

It is the commandment of God, "Thou shalt do no murder," Exod. xx. v. 13, and the Apostle enumerating several of the works of the flesh, amongst the rest reckons murders; and then concludes with these remarkable words: "Of which I tell you before, as I have told you in time past, that they which do such things shall not inherit the kingdom of God," Gal. v. v. 21.

And murderers are threatened to have "their part in the lake which burneth with fire and brimstone, which is the second death," Rev. xxi. v. 8. See ch. xxii. v. 15. Words which carry that terror with them, that considering your circumstances, and your guilt, surely the sound of them must make you tremble, "For who can dwell with everlasting burnings?" Isa. xxxiii. v. 14.

I suppose you all know that you must appear before the tribunal of Christ; from whose infinite knowledge none of your actions can be hid, and from whose infinite power no one can rescue you or protect you; and from whom, without a true and unfeigned repentance for all your sins passed, you can expect no other than that dreadful sentence of condemnation, "Depart from me, ye cursed, into everlasting fire, prepared for the devil and his angels," Matth. xxv. v. 41.

I do not speak this to overwhelm you with sorrow, much less to drive you into despair of God's mercy, which is one of the worst of sins, and which I hope you will not add to your other offences against God. But I mention this to you, to make you sensible of the great danger of your condition, without true and unfeigned repentance. For seeing I can give you no hopes of pardon from man, I hope you will improve the short time you have now left you, to make your peace with God, and to obtain pardon from him.

And I wish that what I now say to you in this your deplorable conditions, may make you all sensible of the greatness of your offences, that so you may become truly penitent; which if you are, you may yet hope for mercy from

God: "For though your sins be as scarlet [even dyed in blood] yet he can make them white as snow," Isa. i. v. 18.

Therefore if you will now turn unto God by a true and unfeigned repentance, he will not refuse you nor reject you, even now in your great distress.

For the threatenings declared by God in the Scripture against sinners, must always be understood against impenitent sinners; for God hath declared himself to be "merciful and gracious," Exod. xxxiv. v. 6. "And that he hath no pleasure in the death of the wicked, but that the wicked turn from his way and live," Ezek. xxxiii. v. 11, ch. xviii. v. 23. And hath promised, that when he doth so, "he shall save his soul alive," ver. 27.

But be sure remember that you must go to God, in and through the alone merits and intercession of his Son Jesus Christ, who hath made satisfaction to the justice of God for us: "For he is our advocate with the Father; and he is the propitiation for our sins," John ii. v. 1, 2. "For his blood cleanseth us from all sin," ch. i. v. 7. Know, therefore, that "there is none other name under heaven, given among men, whereby we must be saved, but only by the name of the Lord Jesus," Acts iv. v. 12.

But then consider how he invites "all them that labour and are heavy laden with their sins to come unto him, and he will give them rest," Matth. xi. v. 28. "He will not break the bruised reed, nor quench the smoaking flax," Isa. xlii. v. 3, compared with Matth. xii. v. 20. The apostle tells us, "that Christ Jesus came into the world to save sinners," 1 Tim. i. v. 15. And he himself assures us, "that he came to seek and save that which was lost," Luke xix. v. 10, Matth. xviii. v. 11. And hath promised, that "he that cometh unto him, he will in no wise cast out," John vi. 37.

Doubt not, therefore, but that if you will now sincerely turn to God, he will accept you: and pardon and forgive you your sins.

But know that the condition of these and other the promises of God made to sinners, is faith and repentance. And great sins (such as yours are) must have great repentance. You must earnestly cry unto God for pardon and remission of your sins, and particularly, that he would "deliver you from blood-guiltiness," Psal. li. v. 14.

And do not mistake the nature of repentance, to be only barely a sorrow for your sins, by reason of the evil and punishment which they have now brought upon you: but your sorrow for your sins must arise from the consideration of your having offended a gracious and merciful God. To which should be added, a sincere resolution and an actual amendment for the future. Indeed, such is your unhappy circumstances, that you cannot give any actual proof of the amendment of your lives: but remember that God knows the heart.

Time will not permit me to enlarge upon the nature of repentance, and of the many mistakes that men make in that great duty: neither indeed will I so far presume to meddle out of my own profession. You may have those matters better explained to you by some of the ministers of this province, whom you may desire to attend you, and fit you for death; and from them you may expect more full and particular directions: "For the priests' lips shall keep knowledge, and you shall seek the law at their mouths: for they are the messengers of the Lord," Mal. ii. v. 7. "And the ambassadors of Christ; and to them is committed the word [or doctrine] of reconciliation," 2 Cor. v. 19, 20.

Thus having discharged my duty to you as a Christian, by exhorting you to an unfeigned repentance for your crimes, and faith in Christ, by whose merits alone you must hope for pardon and salvation, I must now do my office as a judge.

The Sentence that the law hath appointed to pass upon you for your offences, and which this Court doth therefore award, is,

'That you the said Robert Tucker, Edward 'Robinson, Neal Paterson, William Scot, Job 'Bayley, John William Smith, Thomas Car-'man, John Thomas, William Morrison, Wil-'liam Livers alias Evis, Samuel Booth, Wil-'liam Hewet, John Levit, William Eddy alias 'Nedy, Alexander Annand, George Ross, 'George Dunkin, John Ridge, Matthew King, 'Daniel Perry, Henry Virgin, James Robbins, 'James Mullet alias Millet, Thomas Price, 'John Lopez, Zachariah Long, James Wilson, 'John Brierly and Robert Boyd, shall go from 'hence to the place from whence you came, 'and from thence to the place of execution, 'where you shall be severally hanged by the 'neck, till you are severally dead. And the 'God of infinite mercy be merciful to every 'one of your souls.'

After the condemnation of the above-mentioned persons, Thomas Nichols, Rowland Sharp, Jonathan Clarke, and Thomas Gerrard, who were found Not Guilty, were discharged.

And then the Court adjourned to Monday the 10th instant.

On Saturday, November the 8th, 1718, Robert Tucker, Edward Robinson, Neal Paterson, William Scot, Job Bayley, John William Smith, John Thomas, William Morrison, Samuel Booth, William Hewet, William Eddy alias Nedy, Alexander Annand, George Ross, George Dunkin, Matthew King, Daniel Perry, Henry Virgin, James Robbins, James Mullet alias Millet, Thomas Price, John Lopez and Zachariah Long, were executed at the White Point near Charles-town, according to the above Sentence.

Monday, Nov. 10, 1718.

The Court met according to adjournment.

Then the Court proceeded to arraign Stede Bonnet alias Edwards alias Thomas, [who had

escaped, but was retaken, Nov. 6,] for feloniously and piratically taking the sloop Francis, with her goods, captain Peter Manwareing, commander; and the sloop Fortune, with her goods, captain Thomas Read commander; upon the two following Indictments.

"The jurors for our sovereign lord the king, do on their oath present, That Stede Bonnet alias Edwards alias Thomas, late of Barbadoes, mariner; Robert Tucker, late of the island of Jamaica, mariner," &c. as before.

"The jurors for our sovereign lord the king, do on their oath present, That Stede Bonnet alias Edwards alias Thomas, late of the island of Barbadoes, mariner; David Heriot, late of the island of Jamaica, mariner; Edward Robinson, late of Newcastle upon Tyne, mariner," &c. as before.

To both which Indictments he pleaded Not Guilty.

Judge *Trott.* You are to come upon your trial this day, upon the first Indictment, and you have pleaded Not Guilty; so that what evidence you have must be ready.

Bonnet. My pleading Not Guilty is because I may have something to offer in my defence; and therefore I hope none of the bench will take it amiss.

The Court proceeded upon his trial on the first Indictment, for piratically taking the sloop Francis, capt. Peter Manwareing commander.

Then the Jurors were sworn, whose names are as followeth:

Timothy Bellamy, foreman, George Ducket, William Sheriff, Benjamin Dennis, Jonathan Main, John Lee, Thomas Bee, James Mazyck, Thomas Lamboll, Henry Beaton, Moses Wilson, Claas Joor.

Mr. *Hepworth.* May it please your honours, and you gentlemen of the Jury; the prisoner who now stands arraigned at the bar, has been guilty of many piracies, committed many robberies, ruined many families, and been the occasion of many most cruel and inhuman murders, and all that within a very short time past. Should I here descend into all the particulars, I shall take up too much of your time. You know (all of ye) I believe, after what manner he lately fled from justice. Nay, he was not satisfied with his own escape, but he must tamper with the king's evidence, to avoid others being prosecuted; and prevailed with the master Heriot to run away with him, who has been since killed. And I believe the prisoner at the bar cannot, upon reflection, but think himself answerable for that man's death. Nay, some people took particular notice of the prisoner's behaviour at the time when Thatch having got the command from him, he began to reflect upon his past course of life, and was then filled with such horror, that he was perfectly confounded with shame at the many detestable crimes he had been guilty of, and said, he would gladly leave off that way of living, being fully tired, and having got considerably by it; but he should be ashamed ever to see the face of an Englishman: therefore if he could not get to Spain or Portugal, where he might be undiscovered, he would live and die in the same course of life, viz. in piracy and robbery.

The trial of this man ought to be the more considerable, as he was the great ringleader of them; who has seduced many poor, ignorant men to follow his course of living, and ruined many poor wretches; some of whom lately suffered, who with their last breath expressed a great satisfaction at the prisoner's being apprehended, and charged the ruin of themselves and loss of their lives entirely upon him.

We shall now proceed to call our evidence.

Ignatius Pell sworn.

Mr. *Hepworth.* Pell, begin with the first Indictment, and when you was first acquainted with major Bonnet.

Pell. It was at the bay of Honduras; but captain Thatch was commander in chief.

Att. Gen. This I observe was before they went to Topsail-inlet at North Carolina.

Pell. Yes, Sir; for when we came to Topsail-inlet, Robert Tucker was chose quartermaster; and we went out to go to St. Thomas's for a commission to go a privateering against the Spaniards; but the first vessel we saw we took.

Mr. *Hepworth.* What did you take out of her?—*Pell.* We took some provisions.

Att. Gen. Had you no provisions on board the Revenge?

Pell. Yes, Sir, some beef, pork, and flour.

Mr. *Hepworth.* What was the next vessel you took?

Pell. A sloop belonging to Bermudas. After we had discharged her, we took another in which were eight negroes. We took out two, and left three men and two women, and sent three hands more which made eight; and the next day we gave chace to two ships belonging to Glascow in Scotland, and in the evening we came up with them, and the other turned tail, and we never saw them more after that. And after we had taken some tobacco and other goods, we discharged them. We took, as I remember, two vessels belonging to Bristol, when captain Read was taken.

Att. Gen. What do you know of captain Manwareing?

Pell. We were at an anchor near Cape James alias Cape Inlopen, and a little before night we saw a sloop come to an anchor at the mouth of the river, and we sent off the dory with five hands, and in a little time they returned with captain Manwareing; and the next day we haled the sloop long-side the schooner which we had taken before, and hoisted out several hogsheads of molasses and rum, and put them on board the canoo, and put some pitch and tar on board the sloop.

Att. Gen. Who gave you orders for the doing of that?

Pell. I cannot tell, Sir.

Att. Gen. Did you see major Bonnet on board Manwareing's sloop?

Pell. I cannot say he was, neither do I know certainly that he was not.

Judge *Trott.* Was he not your commander?

Pell. He was called our captain, to be sure.

Clerk. Have you any questions to ask the king's evidence?

Bonnet. Do not you believe in your conscience, that when we left Topsail-inlet, it was to go to St. Thomas's? And there were near forty hands, and they concluded to a marrooning?

Pell. I did believe it was so till after we were out.

Judge *Trott.* That was what they accused you for on their trials; that you deceived them, under a pretence of going to St. Thomas's.

Bonnet. I am sorry that they should take the opportunity of my absence to accuse me of that which I was free from.

Mr. *Dean.* If there were forty hands on board, it cannot be thought that he had power to command them.

Judge *Trott.* But he was commander in chief among them, and that after they went a pirating; was it not so, boatswain?

Pell. He went by that name; but the quarter-master had more power than he.

Judge *Trott.* What do you mean by your evasions? Was he commander in chief, or was he not?—*Pell.* He was.

Judge *Trott.* Then who had the greatest power?

Att. Gen. Do you know if he received his share of captain Manwareing's goods? Or did any receive it for him?

Pell. Sir, it was the quarter-master took care of that.

Judge *Trott.* He was commander in chief, and therefore I suppose he had a double share?

Pell. I did never enquire whether he had or not.

Judge *Trott.* Boatswain, tell the truth; had he his share, or had he not?

Pell. He had it.

Bonnet. Boatswain, did you ever hear me force any man to go?

Pell. No, major, I cannot say I did.

Bonnet. Do you not remember, that when we left Topsail Inlet, and they began to quarrel about provision, that I said I would leave the sloop?—*Pell.* I do remember you said so.

Judge *Trott.* But if you did take some for provision, would no less than thirteen vessels satisfy you?

Bonnet. It was contrary to my inclination.

Mr. *Hepworth.* We proceed to call another evidence.

Captain *Peter Manwareing* sworn.

Mr. *Hepworth.* Captain Manwareing, look upon the prisoner at the bar, do you know him?—*Manwareing.* I know him very well.

Mr. *Hepworth.* Give the Court an account of your being taken by him.

Manwareing. I arrived at Cape James alias Cape Inlopen, the 31st of July: and after being at an anchor some time, we saw a dory coming, as I said before. So I was ordered on board the Revenge.

Judge *Trott.* And before whom was you brought?

Manwareing. Before the man at the bar, captain Thomas he was called then; and so I gave him my papers; and it being night, he said but little more that night. Next morning they hauled the sloop longside the schooner, and hoisted out the rum and molasses out of the sloop, and put on board the schooner; and the first of August we sailed in company to Cape Fear. But indeed the gentleman was very civil to me.

Att. Gen. Did you ever hear him give orders to take out any goods?

Manwareing. He was on board the sloop himself when it was done.

Mr. *Hepworth.* Do you remember any particular goods taken out?

Manwareing. Yes, Sir.

Clerk. Will you ask the king's evidence any questions?

Bonnet. I beg leave to ask whether you ever saw me share among the rest?

Manwareing. You was in the round-house, and a bundle and some pieces was brought; and I saw you take it, and give it the negro-boy, to put into the chest.

Bonnet. There were several that I kept their shares for; but it was not mine.

Manwareing. It was put away by your order.

Bonnet. Did you ever hear me order any thing out of the sloop?

Manwareing. Major Bonnet, I am sorry you should ask me that question: for you know you did: which was my all that I had in the world. So that I do not know but my wife and children are now perishing for want of bread in New England. Had it been only myself, I had not mattered it so much: but my poor family grieves me.

Clerk. Will you ask any more questions?

Bonnet. No, Sir.

Mr. *Hepworth.* We will call another evidence.

James Killing sworn.

Mr. *Hepworth.* Give the Court an account of your being taken, and what goods were taken out of you.

The evidence gave in the same relation as in the former trials; and then added, that major Bonnet ordered him to go and shew which was the rum, and which was the molasses.

Mr. *Hepworth.* Do you remember in particular what goods were taken out?

Killing. Yes, Sir.

Mr. *Hepworth.* Were the twenty-one hogsheads of molasses, and the rum taken out?

Killing. Yes, Sir.

Att. Gen. And all by major Bonnet's order?

Killing. Major Bonnet gave orders for it to be done.

Judge *Trott.* What need had you of so much molasses?

Bonnet. I did not carry it away, and it was contrary to my inclination.

Judge *Trott.* You gave orders for it to be done, and yet it was contrary to your inclinations.

Clerk. Will you ask the king's evidence any questions?—*Bonnet.* No, Sir.

Mr. *Hepworth.* We will call another evidence.

Captain *Thomas Read* sworn.

Mr. *Hepworth.* Please to give the Court an account of captain Manwareing's being taken.

Read. After we came to Cape James, we saw a sloop come to an anchor, and major Bonnet ordered the dory, with five hands to go off; and in about half an hour they came on board with captain Manwareing.

Att. Gen. Was you on board the Revenge when the dory was sent off?

Read. Yes, Sir.

Att. Gen. And major Bonnet gave orders to take out those goods?—*Read.* Yes, Sir.

Judge *Trott.* Was he on board himself?

Read. Yes; and ordered the several goods to be taken out.

Att. Gen. Do you know if the major received his share?

Read. The captain was in the round-house when they shared, and they brought in several pieces of cloth, and a bag of money.

Mr. *Hepworth.* Who brought that to him?

Read. I do not know which of the men.

Att. Gen. And did the captain receive his share?

Read. He ordered it to be put in the chest by the boy.

Clerk. Will you ask any questions?

Bonnet. No, Sir.

Judge *Trott.* You now stand on your defence: what have you to say, I shall be ready to hear.

Bonnet. May it please your honours, there is a young man come from North Carolina, that will say something in my defence.

James King sworn.

Judge *Trott.* What do you know of the prisoner at the bar?

King. When major Bonnet took out his clearance at North Carolina, the sloop was cleared for St. Thomas's, for a commission to go against the Spaniards a privateering.

Mr. *Dean.* Do you certainly know it was so?

King. It was reported to be so by the governor.

Att. Gen. Did you hear the governor declare this?

King. No; but colonel Brice's son told me so.

Judge *Trott.* Colonel Brice lives fifty miles in the country, how did he come to inform you of this?

King. He came down out of the country.

Judge *Trott.* If this be all the evidence you have, I do not see this will be of much use to you; but if you have any thing further to say, I shall be ready to hear you.

Bonnet. I should be glad to go through both indictments at once.

Judge *Trott.* We shall go through but one indictment now; therefore you must prepare to speak to that singly.

Bonnet. May it please your honours, and the rest of the gentlemen, though I must confess myself a sinner, and the greatest of sinners, yet I am not guilty of what I am charged with. As for what the boatswain says, relating to several vessels, I am altogether free; for I never gave my consent to any such actions: for I often told them, if they did not leave off committing such robberies, I would leave the sloop; and desired them to put me on shore. And as for taking captain Manwareing, I assure your honours it was contrary to my inclination. And when I cleared my vessel at North Carolina, it was for St. Thomas's; and I had no other end or design in view but to go there for a commission. But when we came to sea, and saw a vessel, the quarter-master, and some of the rest, held a consultation to take it: but I opposed it, and told them again I would leave the sloop, and let them go where they pleased. For, as the young man said, colonel Brice's son can testify that I had clearance for St. Thomas's.

Judge *Trott.* Was colonel Brice's son there when you cleared for St. Thomas's?

Bonnet. Yes; and col. Brice's son knew I was designed for St. Thomas's.

Judge *Trott.* But, pray, what business had you at St. Thomas's? Surely after you had contracted so much guilt upon your conscience by your former piracies and robberies, you might have been contented to have lived a retired life in North Carolina, reflected on your former wicked course of living, and repented of the same, and not engaged in new actions.

Bonnet. I never took a vessel but with captain Thatch.

Judge *Trott.* Did you not take capt. Manwareing's sloop?

Bonnet. It was contrary to my inclinations; and I told them several times if they would not leave off that course of life, I would leave the sloop: and when capt. Manwareing was taken, I was asleep.

Judge *Trott.* How came you to order the dory to be sent off with five hands to take him? And capt. Read swears it was by your order.

Att. Gen. May it please your honours, and the gentlemen of the jury, the prisoner at the bar hath pleaded Not Guilty to the indictment; but the boatswain, though he seems to bear a very great affection to him, yet tells you that he was commander in chief among them at the time when captain Manwareing was taken. Captain Manwareing tells you, when he was

brought on board the Revenge, he was brought before him, and no other, and that he delivered his papers to him; and he saw his share brought to him in the round-house, and put into the chest.

Then captain Manwareing's mate says, major Bonnet was on board the sloop, and ordered him to shew which was the molasses, and which was the rum. And then captain Read says, major Bonnet was commander in chief, and that he ordered the Dory to be sent off with five hands to take captain Manwareing. Indeed the prisoner pleads he was under constraint from his men, and that it was contrary to his inclinations; but I think it not common for one that is forced to have such command. And as for what James King says in behalf of the prisoner, that he had his clearance for St. Thomas's, in what he was accused of before, that he deceived his men with a notion of his going there for a commission.

Judge *Trott.* Gentlemen of the jury, the prisoner at the bar stands indicted for felony and piracy, committed on a sloop belonging to captain Peter Manwareing, for breaking and boarding the said sloop. The first evidence, Ignatius Pell, through the great affection he seemed to have for him, was unwilling to speak the truth: yet he cannot deny but he was at the taking of thirteen vessels, and particularly captain Manwareing's, and that he had his share. Then comes captain Manwareing, and he says major Bonnet was commander in chief; and that he was brought before him, and he gave his papers to him, and by his order it was that the goods were taken out. And then Killing, the mate, he says Bonnet was on board when the goods were taken out. Then comes captain Read, and he says the dory was sent off by major Bonnet's order; and that his share was brought into the round-house to him. As for his pretence, that his men forced him against his will, it appears by the evidence he did not act like a person under constraint. And in the former trials, several of you remember, that his men generally said, that he deceived them under pretence of his going to St. Thomas's; and that he forced them. So that I think the evidence have proved the fact upon him: but I shall leave this to your consideration.

Then an Officer was sworn to keep the Jury.

Who after they had considered of their verdict, returned, and found the abovesaid Stede Bonnet alias Edwards alias Thomas, Guilty.

Then the Court adjourned till Tuesday morning.

Tuesday, Nov. 11, 1718.

The Court met according to adjournment.

Then the Court proceeded on the Trial of Stede Bonnet alias Edwards alias Thomas, upon the second Indictment for feloniously and piratically taking the sloop Fortune, with her goods, captain Thomas Read commander.

To which indictment upon his arraignment he pleaded Not Guilty; but now desired leave to withdraw his Plea, and pleaded Guilty.

Then the Court adjourned till Wednesday morning.

Wednesday, Nov. 12, 1718.

The Court met according to adjournment.

Then Stede Bonnet alias Edwards alias Thomas, who stood convicted of piracies, as appears by the above Record, being brought to the bar; and being asked what he had to say why judgment of death should not pass upon him:

And he having nothing to allege in arrest of judgment;

Then proclamation for silence was made, while the Judge of the Court of Vice-Admiralty pronounced sentence of death upon the prisoner.

Judge *Trott.* Major Stede Bonnet, you stand here convicted upon two indictments of piracy: one by the verdict of the jury, and the other by your own confession.

Although you were indicted but for two facts, yet you know that at your trial it was fully proved, even by an unwilling witness, that you piratically took and rifled no less than thirteen vessels, since you sailed from North Carolina.

So that you might have been indicted and convicted of eleven more acts of piracy, since you took the benefit of the king's Act of Grace, and pretended to leave off that wicked course of life.

Not to mention the many acts of piracy you committed before; for which, if your pardon from man was never so authentic, yet you must expect to answer for them before God.

You know that the crimes you have committed are evil in themselves, and contrary to the light and law of nature, as well as the law of God, by which you are commanded that "you should not steal," Exod. xx. 15. And the apostle St. Paul expressly affirms, that "thieves shall not inherit the kingdom of God," 1 Cor. vi. 10.

But to theft you have added a greater sin, which is murder. How many you have killed of those that resisted you in the committing your former piracies, I know not: but this we all know, that besides the wounded, you killed no less than eighteen persons out of those that were sent by lawful authority to suppress you, and to put a stop to those rapines that you daily acted.

And however you may fancy that that was killing men fairly in open fight, yet this know, that the power of the sword not being committed into your hands by any lawful authority, you were not empowered to use any force, or to fight any one; and therefore those persons that fell in that action, in doing their duty to

their king and country, were murdered, and their blood now cries out for vengeance and justice against you: for it is the voice of nature, confirmed by the law of God, that "whoso sheddeth man's blood, by man shall his blood be shed." Gen. ix. 6.

And consider that death is not the only punishment due to murderers; for they are threatened to have "their part in the lake which burneth with fire and brimstone, which is the second death," Rev. xxi. 8. See chap. xxii. 15. Words which carry that terror with them, that considering your circumstances and your guilt, surely the sound of them must make you tremble; "for who can dwell with everlasting burnings?" chap. xxxiii. 14.

As the testimony of your conscience must convince you of the great and many evils you have committed, by which you have highly offended God, and provoked most justly his wrath and indignation against you, so I suppose I need not tell you, that the only way of obtaining pardon and remission of your sins from God, is by a true and unfeigned repentance and faith in Christ, by whose meritorious death and passion, you can only hope for salvation.

You being a gentleman that have had the advantage of a liberal education, and being generally esteemed a man of letters, I believe it will be needless for me to explain to you the nature of repentance and faith in Christ, they being so fully and so often mentioned in the Scriptures, that you cannot but know them. And therefore, perhaps, for that reason it might be thought by some improper for me to have said so much to you, as I have already upon this occasion; neither should I have done it, but that considering the course of your life and actions, I have just reason to fear, that the principles of religion that had been instilled into you by your education, have been at least corrupted, if not entirely defaced, by the scepticism and infidelity of this wicked age; and that what time you allowed for study, was rather applied to the polite literature, and the vain philosophy of the times, than a serious search after the law and will of God, as revealed to us in the Holy Scriptures: for "had your delight been in the law of the Lord, and you had meditated therein day and night," Psal. i. 2, you would then have found that God's "word was a lamp unto your feet, and a light to your path," Psal. cxix. 105, and that you will account all other knowledge but loss, in comparison of "the excellency of the knowledge of Christ Jesus," Phil. iii. 8, "who to them that are called is the power of God, and the wisdom of God," 1 Cor. i. 24, "even the hidden wisdom which God ordained before the world," chap. ii. 7.

You would then have esteemed the Scriptures as the great charter of heaven, and which delivered to us not only the most perfect laws and rules of life, but also discovered to us those acts of pardon from God, wherein we have offended those righteous laws: for in them only is to be found the great mystery of fallen man's "redemption, which the angels desire to look into," 1 Pet. i. 12.

And they would have taught you that sin is the debasing of human nature, as being a deviation from that purity, rectitude, and holiness, in which God created us; and that virtue and religion, and walking by the laws of God, were altogether preferable to the ways of sin and Satan; for that the "ways of virtue are ways of pleasantness, and all her paths are peace," Prov. iii. 17.

But what you could not learn from God's word, by reason of your carelessly, or but superficially considering the same, I hope the course of his providence, and the present afflictions that he hath laid upon you, hath now convinced you of the same: For however in your seeming prosperity you might make a mock at your sins, Prov. iii. 17. yet now that you see God's hand hath reached you, and brought you to public justice, I hope your present unhappy circumstances hath made you seriously reflect upon your past actions and course of life; and that you are now sensible of the greatness of your sins, and that you find the burden of them is intolerable.

And that therefore being thus, "labouring, and heavy laden with sin," Mat. xi. 28, you will esteem that as the most valuable knowledge, which can shew you how you can be reconciled to that supreme God whom you have so highly offended; and which can reveal to you him who is not only the powerful "advocate with the Father for you," 1 John ii. 1, but also who hath paid that debt that is due for your sins by his own death upon the cross for you, and thereby made full satisfaction to the justice of God. And this is to be found no where but in God's word, which discovers to us that "Lamb of God, which taketh away the sins of the world," John i. 29, which is Christ the Son of God: For this know, and be assured, that "there is none other name under heaven given among men, whereby we must be saved," Acts iv. 12, but only by the name of the Lord Jesus.

But then consider how he invites all sinners to come unto him, and "that he will give them rest," Matt. xi. 28, for he assures us, "that he came to seek and to save that which was lost;" Luke xix. 10, Matt. xviii. 11, and hath promised that "he that cometh unto him, he will in no wise cast out," John vi. 37.

So that if now you will sincerely turn to him, though late, even at the "eleventh hour," Matt. xx. 6, 9, he will receive you.

But surely I need not tell you, that the terms of his mercy is faith and repentance.

And do not mistake the nature of repentance to be only a bare sorrow for your sins, arising from the consideration of the evil and punishment they have now brought upon you; but your sorrow must arise from the consideration of your having offended a gracious and merciful God.

But I shall not pretend to give you any particular directions as to the nature of repentance:

I consider that I speak to a person whose offences have proceeded not so much from his not knowing, as his slighting and neglecting his duty: Neither is it proper for me to give advice out of the way of my own profession.

You may have that better delivered to you by those who have made divinity their particular study; and who by their knowledge, as well as their office, as being the ambassadors of Christ, 2 Cor. v. 20, are best qualified to give you instructions therein.

I only heartily wish that what, in compassion to your soul, I have now said to you upon this sad and solemn occasion, by exhorting you in general to faith and repentance, may have that due effect upon you, that thereby you may become a true penitent.

And therefore having now discharged my duty to you as a Christian, by giving you the best counsel I can with respect to the salvation of your soul, I must now do my office as a judge.

The sentence that the law hath appointed to pass upon you for your offences, and which this Court doth therefore award, is,

'That you the said Stede Bonnet shall go 'from hence to the place from whence you 'came, and from thence to the place of exe-'cution, where you shall be hanged by the 'neck till you are dead. And the God of in-'finite mercy be mercifult o your soul!'

On Wednesday, December the 10th, 1718, the said major Stede Bonnet was executed at the White-Point near Charles-Town, according to the above sentence.

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458. Proceedings of the House of Lords in Ireland against JEFFERY GILBERT,* esq. Lord Chief Baron, JOHN POCKLINGTON, Esq. and Sir JOHN ST. LEGER, knt. Barons of the Exchequer there, for issuing Process in the Cause of Annesley and Sherlock, in opposition to an Order of that House: 5 GEORGE I. A. D. 1719.

July 28, 1719.

ALEXANDER BURROWES, high sheriff of the county of Kildare, having been several times fined by the Court of Exchequer, for not obeying an Order of that Court, which be apprehended to be a breach of a former Order of the House of Lords, presented the following Petition:

To the Right Hon. the Lords Spiritual and Temporal in Parliament assembled, the humble PETITION of Alexander Burrowes, esq. late Sheriff of the county of Kildare.

Most humbly sheweth; That on the 3d day of October, 1717, your lordships were pleased to order, that the high-sheriff of the county of Kildare should forthwith put Hester Sherlock into the possession of the lands of Little Rath, and other lands in the said Order mentioned, which were to be held by her till she should receive thereout the sum of 1,507*l.* 14*s.* 8¼*d.*, chargeable upon the said lands.

That Charles Nutal, esq. then high-sheriff of the county of Kildare, in obedience to, and by virtue of your lordships' said Order, on the 6th day of October aforesaid, put the said Hester Sherlock into the possession of the premises; and she was in the actual possession thereof, when your petitioner was appointed and sworn sheriff of the said county of Kildare for the year, ending at Michaelmas, 1718.

That on the 15th day of March, 1717, an injunction issued out of the Court of Exchequer, signed by the right honourable Jeffery Gilbert, esq. lord chief baron of the said Court; and under the seal thereof, directed to your petitioner, being then sheriff of the said county; whereby your petitioner was required immediately after receipt thereof, pursuant to an order of the said Court of Exchequer, bearing date the 19th day of February preceding, (although the barons of the said Court had due notice of your lordships' said Order of the 3d of October aforesaid) to restore Maurice Annesley, esq. to the possession of those lands, whereof the said Hester Sherlock was then actually possessed by virtue of, and under your lordships' said Order. And your petitioner was also required by the said injunction to support and keep the said Maurice Annesley in such possession of the premises till the further order of the said Court, or till the said Maurice Annesley should be thereout evicted by due course of law; which injunction was delivered to your petitioner by John Annesley (the said Maurice's brother) who required your petitioner to give him the possession of the said lands, having a Letter of Attorney from his said brother for that purpose (as he informed your petitioner;) but your petitioner refused to execute the said injunction, conceiving it to be a breach of your lordships' said Order of the 3d of October, 1717, and of the rights and privileges of this honourable House.

* In 1722, he was appointed a baron of the Exchequer in England, and in 1725 chief baron of that Court.

Whereupon the said John Annesley in his proper person, on the 13th day of May, 1718, moved the said Court of Exchequer on his affidavit, setting forth, that your petitioner refused to execute the said injunction, and prayed that the said affidavit might be read, which was ordered; and accordingly read by John Beauman, gent. one of the attornies of the said Court, and the said lord chief baron, and the honourable John Pocklington, esq. and sir John St. Leger, kt. two other of the barons of the said Court, then sitting in the said Court of Exchequer, ordered, that your petitioner should be fined 40*s.* if he did not return the said injunction in four days; and on several motions afterwards made by the said John Beauman, the said barons imposed several fines on your petitioner, which amount to 77*l.* sterling, and upon said Beauman's motion on the 30th day of June, 1718, ordered an attachment to the pursuivant against your petitioner, for the matters aforesaid, which accordingly issued.

That on the 7th day of July, 1718, your petitioner returned the said Writ of Injunction, and thereon returned in *hæc verba*, your lordships' said Order of the 3d day of October, 1717, and the resolutions of this honourable House, bearing date the 11th day of February, 1703, on the Petition of Edward earl of Meath, and Cecilia countess of Meath his wife; of which the said barons had likewise due notice. And that your petitioner, by reason of your lordships' said Order and Resolutions, and of the rights and privileges of this honourable House, durst not restore the said Maurice Annesley to the possession of the premises, as by the said Writ of Injunction was required.

That all the said fines being imposed on your petitioner for not returning said writ, and your petitioner having complied with the said orders by returning the same; the said barons Pocklington and St. Leger, on the 16th day of July, 1718, sitting publicly upon the reducing of fines in the Exchequer chamber, and having heard the said several fines imposed on your petitioner read unto them by the proper officer, and being by him informed, that your petitioner had returned said injunction, were pleased to reduce, and accordingly took off the said fines, upon paying 6*d.* in the pound, (as by a rule made by the barons had been practised in such cases, though the same was never taken before, as your petitioner is informed;) but in the afternoon of the said day, John Draycott, one of the attorneys of the said Court, (who paid the box for your petitioner on taking off the said fines) was sent for by the said lord chief baron to his lordship's house, where the said other two barons then were; and after the said barons had heard the said Writ of Injunction and return read, and what was offered in behalf of your petitioner in justification of the said return, the said barons were pleased, at his lordship's said house, to oblige the said Draycott to take back the money he so paid for taking off said fines; and estreated the same, which have since issued in process against your petitioner; although the said return was never complained of by the said Maurice Annesley, or his counsel, nor had your petitioner an opportunity or day given him to justify the legality of the said return, though the same was prayed by the said Draycott in behalf of your petitioner.

That the said barons, without having any regard to the said return, on the 7th day of November last, upon said Beauman's motion, ordered the said attachment to the pursuivant to be renewed against your petitioner; which having issued, your petitioner was obliged to abscond, and keep as private as possible, so that he could not attend his affairs, whereby your petitioner has suffered very much in his fortune.

That by reason of the said attachment to the pursuivant, so from time to time issued against your petitioner, he could not come upon his accounts before the said barons in the said Court of Exchequer: your petitioner being advised and well assured, that if he should appear in the said Court the said barons would commit your petitioner into close custody, for not obeying their said injunction. And the said barons taking advantage of your petitioner's said circumstances, ordered your petitioner to be fined 1,200*l.* and upwards, for not coming upon his accounts; though your petitioner always, was, and still is ready, to give his majesty a just and true account of his said office of sheriff-wick, while he was concerned therein.

May it therefore please your lordships to take the premises into consideration, and make such order therein for your petitioner's relief, as to your lordships in your great wisdom shall seem meet.

And your petitioner will ever pray,

ALEX. BURROWES.

Upon reading this Petition, the House of Lords referred it to the Committee for courts of justice, who after an examination into the affair, made the following Report by the lord bishop of Clogher, their chairman.

My Lords; The lords committees for courts of justice, to whom the Petition of Alexander Burrowes, esq. late sheriff of the county of Kildare, was referred, do find,

That by the Order of this House of the 3rd of October, 1717, Hester Sherlock, widow, was upon the 6th of the same month, put into the actual possession of the lands of Little Rath, Bodingstown, Darr and Mullenafooky in the county of Kildare, by Edward Conyers, under sheriff to Charles Nuttall, esq. then high sheriff of the said county; to continue therein till she should receive thereout the sum of 1,507*l.* 14*s.* 8½*d.* chargeable on the said lands; and the said Hester continued so possessed by virtue of the said Order for near two years.

That by the minutes of the Chancery side of the Exchequer it appears, that the lord chief baron of the Exchequer, on the 19th February,

1717, produced a letter* dated London the 8th February, 1717, signed Cowper, C. in which two papers † were inclosed, dated the 6th February, 1717, signed William Cowper, Cler' Parliamentor' directed to the lord chief baron of the Exchequer in Ireland, and the rest of the barons of the said Court; alleged by the lord chief baron to be Orders from the Lords in Great Britain, requiring them to restore Maurice Annesley, esq. to the possession of the lands he was dispossessed of; pending his Appeal in the House of Lords of Great Britain.

That on the said 19th day of February, 1717, in pursuance of the said alleged Orders and Letter, (inserted at the end of this Report) though no affidavit had been made, that the said Orders or Letter were regularly compared and signed, the said lord chief baron, and the other barons, without any motion by counsel or attorney, ordered an injunction for the restoring the said Maurice Annesley to possession of the lands he was dispossed of; pending his said appeal, in the name of the chancellor, treasurer, and barons of the said court of Exchequer, whereby the sheriff or sheriffs of the county or counties where the said lands lay, was forthwith to put the said Maurice into the possession of the said lands.

That in order to make out the said injunction, the said Court ordered the said Maurice Annesley, his attorney, agent, solicitor or counsel, should forthwith attend the chief remembrancer, or his deputy, with the names of the lands of which the said Maurice Annesley was so dispossessed of, and also the county or counties where the said lands lay.

That upon the 14th of March, 1717, Affidavit was made before the lord chief baron by John Annesley of Ballisax, in the county of Kildare, esq. wherein Hester Sherlock was made plaintiff, and Maurice Annesley, esq. defendant; that he the said John was dispossessed of the lands of Little Rath, Darr, Bodingstown, and Mullenafooky, which he the said John held by virtue of a lease from the said Maurice Annesley, pending his said Appeal; and that the said John's lease was then in being and undetermined.

That upon the 14th of March, 1717, the said affidavit of the said John Annesley was filed in the chief remembrancer's office, in order to have the said injunction made out; but before the said injunction issued, it appears by the examination of Mr. John Draycott, attorney for Mrs. Sherlock in the Exchequer (after having been sworn at the bar of this House), that he the said Draycott attended Mr. John Becher, then deputy chief remembrancer, at his office, and in the presence of the said John Annesley informed the said Becher, that the said affidavit was insufficient, and that the said Draycott was ready to prove, that the said Maurice Annesley was not at the time of his said Appeal, nor at any time since in possession of the said lands mentioned in the said affidavit; having sold the said lands some years before to Andrew Wilson, esq. and Mrs. Frances Harman.

That by two copies of memorials out of the Register's office (for registering deeds, &c. pursuant to act of parliament), proved by the said Draycott to be true copies of the memorials remaining in the said office, it appears, that by deeds of lease and release bearing date respectively the 1st and 2d days of March, 1714, the lease being made between Jeffery Paul, esq. on the one part, and Andrew Wilson, esq. of the other part; and the release made between the said Jeffery Paul of the first part, said Andrew Wilson of the second part, and Maurice Annesley, esq. on the third part, whereby the several lands of Little Roth, Darr, and Bodingstoun in the parish of Naas, and county of Kildare, were for the considerations

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* "London, the 8th of February, 1717. My Lord Chief Baron; By Order of the House of Lords (a copy whereof I herewith send you), I transmit to your lordship, and to the rest of the barons of his majesty's Court of Exchequer in Ireland, the Order of the said House; whereby the barons of that Court are commanded to restore Mr. Annesley to the possession of his estate. Your lordship will immediately communicate this to the rest of the barons, and let me know, as soon as can be, what is done by yourself, and the rest of the barons, in pursuance to their lordships' order, as you see by the above-mentioned copy I am ordered to require of you. I am your lordship's most faithful servant. COWPER, C."

"To the Lord Chief Baron of the Exchequer in Ireland, and the rest of the Barons of the said Court."

† Die Jovis, 6th February, 1717. Ordered, By the Lords Spiritual and Temporal in parliament assembled, That the lord chancellor do transmit the Order of this House to the barons of the Exchequer in Ireland, which requires them to cause possession to be forthwith delivered to Maurice Annesley, esq. of the lands of which he was dispossessed, pending his Appeal in this House, commanding the barons of the Exchequer at the same time to return to this House, as soon as they can, an account of what shall be done therein.

WILLIAM COWPER, Cler. Parl.

Die Jovis, 6th February, 1717. Upon Report from the Committee of the whole House to whom it was referred, to consider by what methods the Order of this House, for the restoring possession to Maurice Annesley, esq. of the estate in Ireland, whereof he was dispossessed, pending his Appeal in this House, may be most properly enforced and executed: It is Ordered by the Lords Spiritual and Temporal in parliament assembled, that the barons of the court of Exchequer in Ireland, do cause the said Maurice Annesley, esq. to be forthwith restored to the possessions of the lands of which he was dispossessed, pending his appeal, which was received by this House the 8th day of June last.

WILLIAM COWPER, Cler. Parl.

therein mentioned, conveyed to the said Andrew Wilson and his heirs for ever: And the right honourable the lord Altham, upon his honour declared, that he knew that John Annesley of Ballisax, esq. had paid rent to the said Andrew Wilson by virtue of, and under the said purchase; but believed that the lord chief baron or the other barons knew nothing thereof. It also appears, that by deeds of lease and release, bearing date respectively the 2d and 3d days of April, 1715, made between Maurice Annesley, esq. of the one part, and Frances Harman of the city of Dublin, widow, of the other part: By which said release the said Maurice Annesley for the considerations therein mentioned, conveyed to the said Frances Harman, and her heirs for ever, the lands of Mullenafooky in the said county of Kildare. That notwithstanding there was no county mentioned in the said affidavit, and said notice given of said sale to the said officer as aforesaid; neither did it appear by the said affidavit, that the said Maurice Annesley was dispossessed of the said lands therein mentioned, pending his appeal, the said injunction issued directly to the sheriff of the county of Kildare, bearing date the 22d February, in the fourth year of his majesty's reign, signed Gulfridus Gilbert, and returnable into the said Court in Quindec. Pasch. then next ensuing.

That by an affidavit sworn by John Annesley on the 7th of May, 1718, before Mr. Baron St. Leger, and filed in the chief remembrancer's office the 9th of the same month; wherein he made Maurice Annesley, esq. plaintiff, and Hester Sherlock, widow, defendant; in which the said John Annesley deposed, That on or about the 15th of March preceding, he delivered the before-mentioned injunction to Alexander Burrowes, esq. then high sheriff of the said county of Kildare; and shewed the said sheriff a letter of attorney from the plaintiff, empowering the said John Annesley to receive the possession of the lands in the said injunction mentioned; but the said sheriff refused to execute the said injunction.

That the said John Annesley in his proper person, on the 13th of the said month, moved the said Court upon an attested copy of the said affidavit; but the said Draycott insisting that there was no such cause in Court, the said Annesley was directed by the said Court to amend his affidavit and move it again.

That the said Annesley thereupon erased and altered the said copy, and made Hester Sherlock, widow, defendant; and swore the same before Mr. Baron St. Leger, and filed the said affidavit so amended in the chief remembrancer's office, without any alteration made in the body of the said affidavit; which was proved by the deposition of Daniel Reading, esq. deputy chief remembrancer, who was sworn at the bar of this House, and examined before the said lords committee.

That the same day, viz. 13th May, upon reading the said affidavit, the said Court was informed by counsellor Dixon, that what was sworn in the said affidavit could not be true: For that the said Annesley swore he had a Letter of Attorney from the plaintiff (who was Mrs. Sherlock) to receive possession of the lands therein mentioned; when, in truth, Mrs. Sherlock was then in actual possession of the said lands.

That the lord chief baron said it was only a mistake, and without rectifying the same, on motion of Mr. John Beauman, an attorney, the Court ordered the said sheriff to be fined forty shillings, if he did not return the said injunction in four days; and on said Beauman's several motions, there were fines at several times laid upon the said sheriff for not returning the said injunction, which amounted to 77*l.* which was proved by the minutes of the said Court, and the testimony of the said Draycott.

That the said Draycott likewise proved that the said lord chief baron and the other barons had due notice of the said Order of this House; and the Resolutions thereof made the 11th February, 1703, before any proceedings were had in the said cause, subsequent to the said Order of this House of the 3d of October, 1717, and that the said Annesley and Beauman were served with copies of the said Order and resolutions, before any motions were made by them in the said cause.

That by the minutes of the 13th June, 1718, taken in the said Court, it appears, that Mr. Chancellor of the Exchequer declared, that the Orders of the House of Lords of England being only directed to the barons of that Court; and that he found, that the Order of that Court, which was made thereon, was made as if done by him and the treasurer, as well as by the barons; that he apprehended, that in regard the said Orders were not directed to him, or he present when the said Order of the Court of Exchequer was made, That he had nothing to do therewith, and did not consent thereto.

That it appeared by the testimony of the said Mr. Reading, that the said cause between Sherlock and Annesley was of the Chancery side of the Exchequer; and that all bills in the Chancery side of the said Court were directed to the chancellor, treasurer and barons, and believed, that if a bill was directed otherwise, it would be error.

That upon the 30th of June, 1718, on motion of the said Beauman, an attachment to the pursuivant was awarded against the said Burrowes for not returning the said injunction, bearing test the 1st day of July, in the fourth year of his majesty's reign, and returnable before the chancellor, treasurer and barons of the said Court, in Crast. Animar. then next.

That upon the 7th July, 1718, the said Burrowes returned the said injunction, and the said Beauman was acquainted therewith by the said Draycott: who told the said Beauman, that he was ready to pay him the cost of imposing the said fines and pursuivant, which the said Beauman refused, and told the said Draycott, that he must first have the said sheriff in custody: That the said Draycott applied

again to the said Beauman; and the said Beauman said, he must first lay the said sheriff by the heels.

That by the testimony of the said Mr. Reading and Mr. Draycott, barons Pocklington and St. Leger, upon 16th July, 1718, sat in the Exchequer chamber on the reducing of fines: That the fines imposed upon the said sheriff were then read by Mr. Becher the officer, who informed the said barons, that the said injunction was returned; that a pistole and seven half-crowns were paid to the box, and the said fines were then taken off by the said barons.

That upon the same day in the afternoon, the said Becher, Reading, and Draycott were sent for to the lord chief baron's house, where the two other barons were with his lordship; that the said injunction was sent for, and said injunction and return thereon was read, and the barons declared that it was no return; that the said Draycott told his lordship, that he hoped he would at least respite the said fines till the then next term, or give the said sheriff an opportunity to justify his said return, which was refused: that the list of fines, which was that day read in the Exchequer-chamber, was then called for, and the fines imposed upon the said Burrowes were then read: that the said Draycott was obliged to take back the said money, which he had paid to the box for taking off the said fines, and the same were then restreated.

That the return made by the sheriff upon the said injunction, was to this purpose, (viz.) That before the said writ came to him, the Order of this House of the 3rd of October, 1717, and the Resolutions of this House of the 11th of February, 1708, were delivered to him, which he recites in *hæc verba*. Which return* the Lords Committees have thought fit to annex to their Report. That Charles Nuttal, esq. late sheriff of the county of Kildare, by virtue of the said Order of the 3rd of October, put Hester Sherlock into the pos-

* The Return upon the Injunction. "Cancellar. Thesaurar. et Baronibus Infrascript. humilime Certifico quod ante Adventum hujus Brevis mihi direct. quædam Resolutiones Præhonorabil. Dom. Procerum hujus Regni Hiberniæ fact. in Parliament. apud Dublin. in hoc Regno Congregat. undecimo die Feb. A. D. Millesimo Septingentesimo Tertio mihi deliberat. fuer. quæ sequuntur in hæc verba, scilicet. Resolutions of the right hon. the House of Peers, the 11th of February, 1708.

"Ordered on motion, That the Petition of Edward earl of Meath, and Cecilia countess of Meath his wife, be read; read accordingly.

"Ordered on motion, That the clerk of the rolls do bring into this House the roll of the acts of parliament of the 33th of Henry the sixth.

"Resolved on the question, *nem. con.* That by the ancient and known laws and statutes of this kingdom, her majesty hath an undoubted jurisdiction and prerogative of judging in this her High Court of Parliament, in all appeals and causes within her majesty's realm of Ireland.

"Resolved on the question, *nem. con.* That the determinations and judgments of this High Court of Parliament are final and conclusive, and cannot be reversed or set aside by any other court whatsoever.

"Resolved on the question, *nem. con.* That if any subject or resiant within this kingdom, shall hereafter presume to remove any cause determined in this High Court of Parliament, to any other Court, such person or persons shall be deemed betrayers of her majesty's prerogative and jurisdiction, and the undoubted ancient right and privileges of this honourable House, and of the rights and liberties of the subjects of this kingdom.

"Resolved on the question, *nem. con.* that if any subject or resiant within this kingdom, shall presume to put in execution any order from any other court, contrary to the final judgment and determination of this High Court of Parliament, such person or persons shall be deemed betrayers of her majesty's prerogative and jurisdiction, and the undoubted ancient rights and privileges of this House, and of the rights and liberties of the subjects of this kingdom. En Sterne, Cler. Parl.

"Et ulterius Certifico, quod ante Adventum istius Brevis mihi direct. quidam Ordo fact. per Præhonorabil. Domin. Spirituel. et Temporal. in Parliament. in hoc Regno Congregat. geren. dat. Tertio die Octobris, Anno Dom. Millesimo Septengentesimo decimo Septimo etiam mihi deliberat. fuit qui sequitur in hæc verba, scilicet. Die Jovis Tertio die Octobris, 1717." Whereas by the report made from the lords committees appointed to consider the properest method for the relieving of Hester Sherlock, widow, &c. pursuant to what was ordered and adjudged by this House, on the 19th day of June, 1716, in a cause wherein the said Hester Sherlock, widow, was appellant, and Maurice and John Annesley, esqrs. were respondents: As also upon the Resolutions agreed to this day by this House, it appears, that the sum of 1,507*l.* 14*s.* 8*d.*½ was due to Hester Sherlock, the appellant, upon the 19th day of February, 1716, on account of the principal and interest of the portion of Edward Sherlock, decreed unto the said appellant as administratrix to the said Edward, by this House on the 19th day of June, 1716; and that the lands of Little Rath, Bodingstown, Darr, and Mullenafooky in the barony of Naas and county of Kildare are chargeable with, and liable to the payment of the said sum. It is thereupon ordered by the Lords spiritual and temporal in parliament assembled, that the high sheriff of the county of Kildare, do forthwith put the said Hester Sherlock into the possession of the said lands of Little Rath, Bodingstown, Darr, and Mullenafooky, subject to the said sum of 1,507*l.* 14*s.* 8*d.*½ to be held by her the said Hester, until such time as she shall receive the said sum

session of the premises, and that she was at the time of the return in possession thereof; that by reason of their Order and Resolutions, he durst not restore Maurice Annesley to the possession of the lands in the said injunction mentioned, in prejudice and violation of the right and privileges of this House.

That upon the 7th of November, 1718, upon motion of the said Beauman, the said attachment to the pursuivant against the said Burrowes was renewed, bearing test the 6th of November last, and returnable before the said chancellor, treasurer and barons in Octabis Sanct. Hilarii then next ensuing; and on the 30th January following, the said attachment was again ordered to be renewed: that the said sheriff, by reason of their said attachments, was obliged to abscond, and thereby prevented from coming upon his accounts, and was upon that account fined by the said Court 1,200*l.* and upwards.

That upon the 4th February, 1718, the lord chief baron, and Mr. Baron Pocklington, upon the receipt of three papers,* which the said barons alleged to be Orders from the House of Lords of Great Britain, dated the 23rd January, 1718, signed William Cowper, Cler' Parliamentor'. In a letter produced by the said barons from the lord chancellor, dated London, the 27th January, 1718, signed Parker C. which came by the post; directed to the lord chief baron of the Exchequer in Ireland, and the rest of the barons of that Court; whereby it was ordered, that the

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chargeable upon the said lands as aforesaid, and this shall be a sufficient warrant in that behalf.

"To CHARLES NUTTAL, Esq. High-Sheriff of the County of Kildare.

"En Stern. Cler' Parliamentor'. Virtut. cujus Ordin. prædict. Carolus Nuttal posuit prædict. Hester Sherlock in plen. quiet. et pacific. Possession. Omn. Vill. et Terr. prædict. et prædict. Hester Sherlock jam usq; Continuavit in ead. Possession. Præmiss. prædict. secund. tenor. et effect. Ordinis prædict. Ratione quorum Resolution. et Ordin. in Prejudict. et session. Privileg. Parliament. per Leges et Statut. hujus Regni Hiberniæ provis. infra Nominat. Mauric. Annesley, Ar. ad Possession. Separal. Vill. et Terr. de Little Rath, Bodingstown, Darr. et Mullenafooky infra Mencionant. restituer, non audeo. Sic Respond.

"ALEX. BURROWES Ar. vic."

* Annesley vers. Sherlock. Die Veneris 23 Januarii, 1718. Ordered, by the Lords spiritual and temporal in parliament assembled, that the lord high chancellor of Great-Britain do transmit the two Orders made this day on the behalf of Maurice Annesley, esq. to the barons of the court of Exchequer in Ireland, commanding them at the same time to return, as soon as they can, an account of what shall be done therein. WM. COWPER, Cler. Parl.

London Jan. 27, 1718.

"My lord chief baron; By Order of the House of Lords (a copy whereof I herewith send you) I transmit to your lordship and the rest of the barons of his majesty's Court of Exchequer in Ireland, two Orders of the said House, made in the cause of Annesley against Sherlock; by one of which the barons of that court are commanded to proceed by the most speedy and effectual methods, to cause possession of the estate of the appellant, Maurice Annesley, esq. to be restored to him, as was required by Order of the said House of the 6th February last: and by the other, the said barons are commanded to cause Hester Sherlock to account before them upon oath for the rents and profits of the estate in question, which she has made or received since her gaining possession thereof, by order of the House of Lords in Ireland; and answer and pay the same to the said appellant, Maurice Annesley, esq. but without prejudice to the right, in case of an appeal to be brought by either party from the decree of the Court of Exchequer in Ireland.

"Your lordship will immediately communicate this to the rest of the barons, and return, as soon as you can, an account of what shall be done by yourself, and the rest of the barons, in pursuance of your lordships' said orders, as you see by the abovementioned copy I am ordered to require of you. I am, your lordship's most faithful servant, PARKER, C.

"To the Lord Chief Baron of the Exchequer in Ireland, and the rest of the Barons.

"Annesley *vers.* Sherlock. Die Veneris 23 Januarii, 1718. Upon Report from the lords committees, appointed to enquire into the reason of the delay, in not obeying the Orders of this House, relating to the appeal of Maurice Annesley, esq. and how the same may more properly be enforced: It is ordered by the Lords spiritual and temporal in parliament assembled, that the barons of the Court of Exchequer in Ireland be, and are hereby directed to proceed by the most speedy and effectual methods, to cause possession of the estate of the said Maurice Annesley, as required by Order of this House of the 6th of February last, to be restored to him. WM. COWPER, Cler. Parl.

"Annesley *vers.* Sherlock. Die Veneris 23 Januarii, 1718. Ordered, by the Lords spiritual and temporal in parliament assembled, that the barons of the Court of Exchequer in Ireland do cause the respondent, Hester Sherlock, to account before them upon oath, for the rents and profits of the estate in question, which she has made or received since her gaining the possession thereof, by the Orders of the House of Lords in Ireland; and to answer and pay the same to the appellant, Maurice Annesley, esq. but without prejudice to the right, in case of an appeal to be brought by either party from the decree of the Court of Exchequer in Ireland. WM. COWPER, Cler. Parl."

barons of the said Court of Exchequer, should cause Hester Sherlock to account before them upon oath, for the rents and profits of the estate in question, which she had made or received since her gaining the possession thereof by the Order of the House of Lords in Ireland; and to answer and pay the same to Maurice Annesley, esq. but without prejudice in case of an appeal: also that the barons of the said Court were directed to proceed by the most speedy and effectual methods, to cause possession of the estate of the said Maurice Annesley, as required by their Order of the 6th February, to be restored to him; and also that the chancellor of Great Britain should transmit to the said barons the said Orders, and that they should give an account of what should be done therein.

That without any proof by affidavit, (as usual in courts of equity) the said alleged Orders were regularly signed and compared; and without motion of counsel or attorney, it was ordered in the name of the chancellor and treasurer, lord chief baron, and the rest of the barons of his majesty's court of Exchequer in Ireland, that the injunction of that Court should forthwith issue, directed to the said Hester Sherlock, and to the several and respective tenants of the lands in question; requiring them, and every of them, quietly to restore to the said Maurice Annesley, the possession of the town and lands of Little Rath, Boddingstown, Darr, and Mullenafooky, lying and being in the county of Kildare; the said lands by the said barons supposed to be comprehended in the said Order.

That the said injunction was ordered to be served upon the said persons by the pursuivant attending the said Court, or by any other person or persons whom the said Maurice Annesley, or his agent should appoint: and the said Maurice Annesley, or his agent, was thereby required to leave the names of the several and respective tenants of the said lands at the proper office, in order to be inserted in the said injunction: and also ordered, that the rents of the said lands remaining in the several tenants' hands from the time the said Hester Sherlock was put in possession, should be forthwith by them paid over to the said Maurice Annesley; and that a copy of the said Order should be served upon the said several tenants of the said lands, together with the said injunction: though by the Order of the House of Lords of Great Britain, the barons were only directed to oblige Hester Sherlock to account before them upon oath, for the rents of the said lands received by her since her gaining the possession thereof; which she was to pay to Maurice Annesley, without prejudice, in case of an appeal.

That pursuant to the said Order of the 4th of February, an injunction issued out of the said Court, signed Jeff. Gilbert; bearing test the 12th February last, directed to Hester Sherlock, and 21 persons as tenants to the said lands. That the said Hester Sherlock was never served with the said Injunction or Order; notwithstanding which, she was thereby dispossessed of the said lands about the 20th February last, by the attornments of the tenants; except a small part thereof in the possession of Dennis Galvin.

That upon an affidavit made by Richard Lyons, in a cause of Annesley vers. Sherlock, sworn before Mr. Baron St. Leger, the 23rd of February last; and upon motion of the said Beauman, an attachment to the pursuivant was the same day ordered by the said Court, against said Dennis Galvin, for not obeying the said injunction, though no such person was named in the said writ of injunction.

The said lords committees had also the oath administered to the barons of the Exchequer, laid before them by Mr. Hartley Hutchinson, deputy clerk of the crown in the high court of Chancery, and is as follows; viz.

"Ye shall swear, that well and truly ye shall serve the king in the office of baron of his Exchequer; and that truly ye shall charge and discharge all manner of people; as well the poor as rich, and that for highness nor for riches, nor for hatred, nor for the estate of no manner of person or persons, nor for any good deed, gift nor promise of any person the which is made to you, nor by craft nor by engine, ye shall let the king's right, nor none other person's right ye shall disturb, let nor respitt against the laws of the land, nor the king's debts ye shall put in respitt where that they may goodly be levied, and that the king's needs ye shall speed before all other, and that for gift, wages, no good deed ye shall layne, disturb nor let the profit and reasonable advantage of the king, in the advantage of any other person nor of yourself: and that nothing ye shall take of any person for to do wrong or right or delay, or for to deliver or to delay the people which that have to do afore you; but as hastily as ye may them goodly to deliver without hurt of the king, and having no regard to any profit, that might thereof to you be therein, you shall make to be delivered: and whereas ye may know any wrong or prejudice to be done to the king, ye shall put and do all your power and diligence that to redress, and if ye may not do it, ye shall tell it to the king, or to them of his council, which may make relation to the king if ye may not come to him, to the king's majesty's lieutenant, or other chief governor or governors of this realm for the time being, and the king's council ye shall keep and layne in all things, as God you help, and by the contents of this book."

The committee humbly take leave to observe to your lordships, that there is no name of any attorney to the first injunction.

Which said Report being read, the House agreed to the same, and came to the following Resolutions:

Resolved on the question, That Alexander Burrowes, esq. late high-sheriff of the county of Kildare, has fully proved the allegations

of his Petition, to the satisfaction of this House.

Resolved on the question, That the said Alexander Burrowes, esq. late high-sheriff of the county of Kildare, in not obeying the injunction issued forth out of his majesty's Court of Exchequer, dated the 22nd February, 1717, in the cause between Sherlock and Annesley, has behaved himself with integrity and courage, and with due respect to the Orders and Resolutions of this House.

Resolved on the question, That the fines imposed upon Alexander Burrowes, esq. by the Court of Exchequer, amounting to 77*l.* for not returning the writ of injunction in the cause between Sherlock and Annesley be taken off without fees.

Resolved on the question, That the fines imposed upon Alexander Burrowes, esq. by the Court of Exchequer, for not entering on his accounts, amounting to 1,200*l.* and upwards, be taken off, when he shall have made a just account, without other fees than such as are usual on passing sheriff's accounts.

Resolved on the question, That the lord chief baron, and the other barons of the Court of Exchequer, had due notice of the Resolutions of this House, made the 11th of February, 1703, in the cause of the earl of Meath, and lord Ward, before they made an order for an injunction to put Maurice Annesley into possession.

Resolved on the question, That the lord chief baron, and the other barons of the Court of Exchequer, had due notice of the Order of this House of the 3rd of October, 1717, in the cause of Sherlock and Annesley.

Resolved on the question, That Jeffery Gilbert, esq. lord chief baron of his majesty's Court of Exchequer, in the proceedings in the cause between Sherlock and Annesley, as also against Alexander Burrowes, esq. late high sheriff of the county of Kildare, has acted in direct violation of the Orders and Resolutions of this House.

Resolved on the question, That Jeffery Gilbert, esq. lord chief baron of his majesty's Court of Exchequer, in the proceedings in the cause between Sherlock and Annesley, as also against Alexander Burrowes, esq. late high sheriff of the county of Kildare, has acted in manifest derogation to, and diminution of, the king's prerogative of finally judging in his High Court of Parliament in Ireland, as also of the rights and privileges of this kingdom, and the parliament thereof.

Resolved on the question, That John Pocklington, esq. one of the barons of his majesty's Court of Exchequer, in the proceedings in the cause between Sherlock and Annesley, as also against Alexander Burrowes, esq. late high sheriff of the county of Kildare, has acted in direct violation of the Orders and Resolutions of this House.

Resolved on the question, That John Pocklington, esq. one of the barons of his majesty's Court of Exchequer, in the proceedings in the cause between Sherlock and Annesley, as also against Alexander Burrowes, esq. late high sheriff of the county of Kildare, has acted in manifest derogation to, and diminution of, the king's prerogative of finally judging in his High Court of Parliament in Ireland, as also of the rights and privileges of this kingdom and the parliament thereof.

Resolved on the question, That sir John St. Leger, knt. one of the barons of his majesty's Court of Exchequer, in the proceedings in the cause between Sherlock and Annesley, as also against Alexander Burrowes, esq. late high sheriff of the county of Kildare, has acted in direct violation of the Orders and Resolutions of this House.

Resolved on the question, That sir John St. Leger, knt. one of the barons of his majesty's Court of Exchequer, in the proceedings in the cause between Sherlock and Annesley, as also against Alexander Burrowes, esq. late high sheriff of the county of Kildare, has acted in manifest derogation to, and diminution of, the king's prerogative of finally judging in his High Court of Parliament in Ireland, as also of the rights and privileges of this kingdom, and the parliament thereof.

Resolved on the question, *nem. con.* That it is the duty of the barons of the Exchequer, where there is any wrong or prejudice done to the king, in matters lying before them, to inform the king, or the chief governor or governors of this kingdom, or the council.

Resolved on the question, That the case of Sherlock and Annesley, as it lately lay before the barons of the Exchequer, being matter not only of law, but of state, ought to have been laid before the king, the chief governor or governors of this kingdom, or the council of the same: it so nearly concerning his majesty's prerogative, and the interest of the whole kingdom.

Dissentient.—Jo. Meath, Welbore Kildare, Henry Killalla and Achonry, Tuam. Kilmore and Ardagh, Donerayle, Midleton, Canc. Wm. Derry.

Resolved on the question, That Jeffery Gilbert, esq. lord chief baron of the Court of Exchequer, John Pocklington, esq. and sir John St. Leger, knt. barons of the same, in their proceedings in the cause between Sherlock and Annesley, and against Alexander Burrowes, esq. late sheriff of the county of Kildare, have acted contrary to law, and to the established practice of the king's courts.

Dissentient.—Jo. Meath, Welbore Kildare, Henry Killalla and Achonry, Tuam. Kilmore and Ardagh, Donerayle, Midleton, Canc. Wm. Derry.

Resolved on the question, That Jeffery Gilbert, esq. lord chief baron of the Court of Exchequer, having taken upon him to put in execution a pretended Order from another Court, contrary to the final judgment of this High Court of Parliament, in the cause between Sherlock and Annesley, is a betrayer of his majesty's prerogative, and the undoubted ancient

rights and privileges of this House, and of the rights and liberties of the subjects of this kingdom.

Dissentient.—Jo. Meath, Welbore Kildare, Henry Killalla and Achonry, Timo. Kilmore and Ardagh, Donerayle, Midleton, Canc. Wm. Derry.

Resolved on the question, That John Pocklington, esq. second baron of the Court of Exchequer, having taken upon him to put in execution a pretended Order from another Court, contrary to the final judgment of this High Court of Parliament, in the cause between Sherlock and Annesley, is a betrayer of his majesty's prerogative, and the undoubted ancient rights and privileges of this House, and of the rights and liberties of the subjects of this kingdom.

Dissentient.—Jo. Meath, Welbore Kildare, Henry Killalla and Achonry, Timo. Kilmore and Ardagh, Donerayle, Midleton, Canc. Wm. Derry.

Resolved on the question, That sir John St. Leger, third baron of the Court of Exchequer, having taken upon him to put in execution a pretended Order from another Court, contrary to the final judgment of this High Court of Parliament, in the cause between Sherlock and Annesley, is a betrayer of his majesty's prerogative, and the undoubted ancient rights and privileges of this House, and of the rights and liberties of the subjects of this kingdom.

Dissentient.—Jo. Meath, Welbore Kildare, Henry Killalla and Achonry, Timo. Kilmore and Ardagh, Donerayle, Midleton, Canc. Wm. Derry.

It is ordered by the Lords spiritual and temporal in parliament assembled, That the right honourable Jeffery Gilbert, esq. lord chief baron of the Court of Exchequer, shall, for the said offences, be taken into the custody of the gentleman usher of the Black Rod attending this House.

Dissentient.—Jo. Meath, Welbore Kildare, Henry Killalla and Achonry, Timo. Kilmore and Ardagh, Fitz-Williams, Midleton, Canc. Donerayle, Wm. Derry.

It is ordered by the Lords spiritual and temporal in parliament assembled, That John Pocklington, esq. second baron of the Court of Exchequer, shall, for the said offences, be taken into the custody of the gentleman usher of the Black Rod attending this House.

Dissentient.—Jo. Meath, Welbore Kildare, Henry Killalla and Achonry, Timo. Kilmore and Ardagh, Fitz-Williams, Midleton, Canc. Donerayle, Wm. Derry.

It is ordered by the Lords spiritual and temporal in parliament assembled, That sir John St. Leger, knt. third baron of the Court of Exchequer, shall, for the said offences, be taken into the custody of the gentleman usher of the Black Rod attending this House.

Dissentient.—Jo. Meath, Welbore Kildare, Henry Killalla and Achonry, Timo. Kilmore and Ardagh, Fitz-Williams, Midleton, Canc. Donerayle, Wm. Derry.

To the Proceedings in this Case, it appears that in the year 1769, reference was made in the Irish House of Lords: As to this I here insert from the "London Museum" for May, 1770, the following article, which appeared to me to be curious in different respects. I think it not improbable that lord Mountmorres himself communicated the article to the publication from which I have extracted it:

"*December* 5, 1769.

"The following Resolutions being proposed, That by an act of parliament, the 10th of Henry 7, it is enacted, that all judicial officers shall hold their places during pleasure.

"That the chancellor of the Exchequer is a judicial officer.

"That an humble Address be presented to his majesty beseeching him to give orders to his attorney general to issue a Scire Facias against a patent by which the present chancellor of the Exchequer is to hold the same during life.

"That by an act of parliament the 10th of Henry 7, it is enacted, that all judicial officers shall hold their places during pleasure. And that it appears, that the clerk, or master of the rolls, is expressly enumerated in the act as a judicial officer.

"That an humble Address be presented to his majesty, beseeching him to give orders to his attorney general to issue a Scire Facias against a patent by which the office of clerk, or master of the rolls, has passed to the right hon. Richard Rigby, esq. for life.

"A motion being made to adjourn the consideration of the said Resolutions till the 1st of August,

"And a debate arising thereupon, the question was put, and the House divided.

"The lord viscount Clare reported, that the Contents below the bar were 22, and the Not Contents in the House were 9.

"It was resolved in the affirmative.

"A motion being made that the following queries be referred to the judges:

"Whether the chancellor of the exchequer be a judicial officer immemorially in both kingdoms?—Whether it is enacted by the 10th of Henry 7, that all judicial officers shall hold their places during pleasure?—Whether a patent under which the office of chancellor of the Exchequer has passed for life to the present chancellor, be legal?

"And a debate arising thereupon, the question was put and the House divided.

"The earl of Lanesborough reported, that the Contents below the bar were 5, and the Not Contents in the House were 24.

" It passed in the negative.

" A motion being made that the following queries be referred to the judges;

" Whether the master of the rolls be a judge in England immemorially?—Whether the 3d of George 2, is not declaratory of the common law?—Whether if he is a judge at common law in England, he is not also a judge here?—Whether by the 10th of Henry 7, it is not enacted, that all judicial officers shall be only during pleasure?—Whether, in that act of parliament, he is not expressly the clerk, or master of the rolls, is not enumerated expressly as a judicial officer?—Whether a patent under which that office passed to the right honourable Richard Rigby for life be legal?

" It passed in the negative.

" Dissentient,

" 1. Because we conceive that it is in the highest degree inexpedient to procrastinate the consideration of a measure, the high importance and the propriety of which appears to us to be clearly evident, for these following reasons:

" 2. Because it is enacted by an act of parliament, of the 10th of Henry 7, in the following words; 'Item, praying the Commons, that in 'consideration of the great and manifold inconveniencies that late were attempted there 'contrary to all natural allegiance, to the 'king's grievous displeasure, by the procurement, counsel, and exhortation of such officers, as late had administration of justice, under the king, in that land, and such as were 'officers accomptants, and had their offices 'granted unto them by patent for term of life, 'by reason whereof they were the more bolder 'to misuse their such authority: therefore be 'it ordained, enacted, and established by the 'authority of this present parliament, that from 'this time forward no manner of person or 'persons that shall have ministration of justice, 'that is for to say, the chancellor, the treasurer, 'judges of the King's-bench, and Common 'Pleas, the chief and secondary baron of the 'Exchequer, the clerk or the master of the 'rolls, and all manner of officers accomptants, 'have any authority by patent in their such 'offices, but only at the king's will and plea'sure: and if any grant afore this time, or 'hereafter be made, of any of the said offices, 'unto any person or persons there, contrary to 'the premises, the same to be deemed void and 'of none effect in the law; and by the same 'authority all and every manner act or acts, 'before this time made to the contrary hereof, 'to be revoked and deemed void and of none 'effect in the law.'

" 3. Because we conceive that the chancellor of the Exchequer is meant by the word in the act, and not the lord high chancellor, for the following reasons, because it would be needless to ordain that by statute which obtained by custom before: and the history of those times informs us, that Alexander Plunket was made chancellor in the year 1492, by the duke of Bedford, lord lieutenant of Ireland: and because that in the subsequent session in the year 1494, he was removed from his office by sir Edward Poynings, the author of this law, and the seals were given to the prior of Lanthony, vide List of Irish Chancellors, by sir J. Ware, 2d vol. 109, though he had been appointed by the English interest, and though no crime or misbehaviour was alleged against him, because this clearly evinces that the seals were granted during pleasure in the times immediately preceding this law, and consequently an ordinance for that purpose would be needless.

" 4. Because we conceive that the chancellor of the Exchequer is virtually comprised under the general words in the statute officers accomptants, as a principal revenue officer.

" 5. Because, admitting that he did not come under the enumerative words of the statute, he certainly is comprehended under the general words, administration of justice, as a judicial officer, and consequently his patent for life is void.

" 6. Because sir Edward Coke founds the court of equity in the Exchequer, upon the office of chancellor of the Exchequer, in these words; 'Hereupon it is collected, that seeing 'there has been, time out of mind, a chancel'lor of the Exchequer, it follows, that there 'should also be in the Exchequer a court of 'equity.' 4th Institute, 119.

" 7. Because it appears that this office has been granted in England immemorially during pleasure. That the patents during the reigns of Edward 1, and 2, were at will, vide Madox's History of the Exchequer, 51, and that John Desandale acted there as a judge at that time. And because, by an act of parliament of the 10th of Henry 7, chap. 22, all the English laws and customs previous to that period are made of force in Ireland.

" 8. Because the chancellor of the Exchequer has always been esteemed a judicial officer, and all bills on the equity side, should be directed to the chancellor, treasurer, and barons of the Exchequer; and it was affirmed by the lords of Ireland, in the great cause of Sherlock and Annesley, upon the deposition of Daniel Redding, esq. deputy remembrancer, sworn at the bar, that all bills or orders on the equity side, should be directed to the chancellor, treasurer, and barons of the Exchequer; if otherwise directed, that it would be error, and that the barons of the Exchequer were not warranted in obeying an injunction directed only to them, and in making use of the names of the chancellor and treasurer of the Exchequer, vide State Trials, and Lords' Journal of the 28th of July 1719, p. 319 and 483.

" 9. Because it has been customary for the chancellor of the Exchequer to preside at the commencement of the term: and because a gentleman lately possessed of that office presided to the great ease and benefit of the suitors in that court: and because the absence and neglect of the first officer of the Exchequer is a great loss to all the people of Ireland.

"10. Because that the master of the rolls being expressly enumerated as a judicial officer in the act of parliament, we conceive that the patent by which that office passed to Richard Rigby, esq. for life is void.

"11. Because it appears that the master of the rolls is a judicial officer immemorially in both kingdoms: because though it was disputed formerly in England, whether he derived his power of hearing and determining causes in the absence of the chancellor, from prescription or from special commission, the 5d of George 2, chap. 30, to quiet those questions, ratifies all decrees made by him or his predecessors, in the absence of the chancellor, and declares that he has been a judicial officer time immemorial, because if he is a judge at common law in England, he is also a judge here by the 10th of Henry 7.

"12. Because sir Edward Coke expressly says, 'That in the absence of the chancellor 'he heareth causes, and giveth orders.' 4th Institute, p. 97. Because his opinion in this respect has the greatest weight, as not likely to enlarge an equitable jurisdiction.

"13. Because no reason can be originally assigned for the separation of the judicial and ministerial power of this officer: and because that the clerk, or master of the rolls, are synonymous terms, resulting from this circumstance, that it was anciently the custom to appoint the first clerk, or master in Chancery, master of the rolls.

"14. Because though the administration of justice be expressly excepted in the patent, we conceive that the crown cannot sever the judicial from the ministerial power of an office; since, if it can do it in the case of one, it can do it in any office where they have been united.

"15. Because the residence of this officer was esteemed necessary formerly, seeing that one Henington, a master in chancery, in England, about the time of Edward 3, resided here as master of the rolls, and was allowed to hold his place as master in chancery in England, by deputy.

"16. Because it appears that Christopher Wandesford, esq. master of the rolls, attended the House as a judge, and that he read the lord deputy Wentworth's commission for holding a parliament in the year 1634, by his order standing by the woolsack among the judges. Lords' Journal, 1634-8.

"17. Because it appears that a Petition was presented to his majesty, king Charles 1, in the year 1640, by the Lords of Ireland; representing that 'the master of the rolls was a 'counsellor of state, an officer of great trust and 'consequence, to give advice to the council 'board and in the court of Chancery, and praying him that that office might not be granted 'to any one who had not sufficient estate in 'this country, and who had not experience, 'quality, or reputation in the common-wealth, 'sufficient to discharge the said trust faithfully, 'nor to answer for any misdemeanors that may 'be committed in the undue execution of the 'said place.' Lords' Journal, 1639—411.

"18. Because that this disadvantage attends granting judicial officers for life, that age or infirmity may disqualify them for their offices.

"19. Because though this office has frequently been granted for life, since the 10th of Henry 7, yet no inference can be drawn from thence, as custom cannot be pleaded against an act of parliament. 1st Institute, 115.

"29. Because we humbly conceive that judicial officers should be selected from men of knowledge and of the profession of the law.

"21. Because a legal disquisition of this subject was studiously avoided in the debate, and because that a reference to the judges was denied, upon a presumption that this enquiry might come before them in another capacity; an objection that would operate equally well in every other case, since there is no legal point which may not be cognizable in their respective courts.

"22. Because we conceive that the absence of these two great judicial officers is a heavy grievance to this country, creating an accumulation of business in the Chancery, deferring suits for want of an assistant, in case of the absence or indisposition of the chancellor: for these reasons we have thought it our duty to transmit reasons, which to us appear irrefragable, to the unerring judgment of the public and of posterity, and to exempt ourselves in the minds of thinking men, both here and in another kingdom, from that obloquy which falls upon the legislature of this country, for their acquiescence under the evident violation of the express words of an act of parliament.—Mountmorres, Moira, Charlemont, Louth, Powerscourt, Southwell, Longford, Lisle."

By stat. 41 Geo. 3, c. 25, U. K. (which was enacted presently after the Union of the two kingdoms, see the British stat. 39, 40 Geo. 3, c. 67, and the Irish stat. 40 Geo. 3, c. 38,) the master of the rolls in Ireland was constituted an active judicial officer.

By the statute 6 Geo. 1, c. 5, "for the better securing the dependency of the kingdom of Ireland upon the crown of Great Britain," it was declared, that the Peers of Ireland had no jurisdiction to affirm or reverse any judgments or decrees whatsoever. This act was repealed by stat. 22 Geo. 3, c. 53. By statute 25 Geo. 3, c. 28, the right claimed by the people of Ireland to have all actions and suits instituted in that kingdom decided in his majesty's courts there finally and without appeal from thence, is established and ascertained for ever, and at no time to be questioned or questionable, and all Writs of Error and Appeals in the English courts respecting such actions and suits shall be null and void. As to the consolidation of the British and Irish Peerages, see the British act, 39, 40 Geo. 3, c. 67; and the Irish acts, 40 Geo. 3, c. 29; 40 Geo. 3, c. 38.

459. The Trial of JOHN MATTHEWS, Printer, for High Treason, for printing a Libel, entitled, "Ex ore tuo te judico, Vox Populi Vox Dei,"* at the Sessions House, in the Old Bailey, before the Lord Chief Justice King, Lord Chief Baron Bury, the Judges Powis, Blencow, Price, Tracy, Eyre, Montagu, Fortescue, Page, and Dormer;† 5 GEORGE I. A. D. 1719.

October 30, 1719.

AT the Sessions House, in the Old Bailey, the 14th October 1719, the prisoner, John Matthews, was brought to the bar, but on the motion of the prisoner's counsel, and on producing an affidavit of one Carroll, the Court adjourned to the 16th: when the Court met again, the prisoner being brought to the bar, Mr. Justice Tracy, and Mr. Baron Price, attending,

An objection was made by the prisoner's counsel, that by the statute of the 7th king William, the prisoner in the cases of high treason, is to have a copy of the pannel duly returned by the sheriff, two days at least before the trial; and that in the copy of the pannel so delivered to the prisoner and returned by the sheriffs of London, was inserted the names without the addition of parish, ward, or place of abode. And the question was, whether this is a right pannel, according to the act of the 27th Eliz. ch. 7, the title of which act is, that no juror shall be returned without an addition of his dwelling place, &c. And for that purpose the act provides, that no juror, whether living within or without a liberty, shall be returned without an addition of the place, of his dwelling or abode, or some other addition, by which the party named may be known.*

The judges then present differed in their opinion, and ajourned to another day, to take the opinion of the rest of their brethren, to whom the said judges that attended made their Report, and on the 30th of October, the Court met again, when eleven judges attended, (viz.) lord chief justice King, lord chief baron Bury, the judges Powis, Blencow, Price, Tracy, Eyre, Montagu, Fortescue, Page, and Dormer, (lord chief justice Pratt absent) who all agreed, that the city of London was not within the meaning of that act, and that the pannel was a good and legal pannel; and the trial ought to go on.—Accordingly the jury were called over, and after a great many were challenged by the prisoner, the following were sworn:

JURY.

Thomas Clarke,	Charles Fox,
Robert Thorp,	Nat. Michlethwaite,
Elias Turner,	John Thompson,
Richard West,	Morgan Atkinson,
William Smith,	Richard Guy,
Robert Smith,	William Kent.

L. C. J. Are they all sworn?
Cl. of Arr. Yes, my lord.
L. C. J. Then read the Indictment.

THE INDICTMENT.

"London. ss. Jur' pro Dno. Rege sup' Sacram' suum p'sentant qd. Joh'es Matthews de London Typographus existens subdit' serenissimi Dni. Georgii modo Regis Magnæ Britanniæ Franc' et Hiberniæ, fidei Defensor, &c. timorem Dei in Co. suo non h'ens nec debit. ligeanc' sue ponderans sed instigatione Diabolica mot' et seduct' ut falsus Prodit' contra dict. Dnm. Regem nunc suprem. verum leg' et indubitat' Dnum. suum cordialem amorem

* "By a gentleman, who was at Rome in September 1765, we are informed that the Pretender was declining in his health very fast; grown superannuated and childish; was never visited, or seen by any body, but those immediately attending upon him. He died at Rome, January 1, 1766."—Thank God, Jacobitism is in a manner extinct, and all the hopes of the Pretender and his adherents, at an end: so we shall close the trials relating to the late unnatural rebellion in 1745-6, with the trial of one who suffered for asserting those weak doctrines of Hereditary Right, and the Rights of the Pretender, &c. which have occasioned the effusion of so much blood and treasure in these kingdoms; and we hope his present most sacred majesty king George 3rd, may enjoy a long, very long, peaceable and quiet reign, over a free and happy people; and after him, a succession of princes sprung from his illustrious House." *Former Edition.* As to the Pretender, See Vol. 12, pp. 123, 144, *et seq.*

† This Trial was taken in short-hand, with leave of the Court, by Mr. J. Shayler.

* See Leach's Hawkins's Pleas of the Crown, book 2, c. 49, s. 54.

* The little Tract, entitled, "The Method of Trial of Commoners, in Cases of High Treason," published in the year 1709, by Order of the House of Lords, directeth, "that the additions of dwelling-places, and professions of the jurors, be inserted in the copy of the pannel:" But the act doth not require that exactness, and the practice is otherwise. Foster's Reports, p. 230. But see 7 Anne, c. 21. *Former Edition.* See also Leach's Hawkins's Pleas of the Crown, book 2, ch. 39, s. 16.

ac veram et debit' obedient' fidelitat' et ligeanc' quas quilibet subditus dict' Dni. Regis erga ipsum Dnum. Regem gereret et de jure gerese tenetur penitus subtrahen. post vicesim' quintu' diem Martii Anno Dom. Milles. septingent'imo sexto scil't Decimo die Junii Anno Regni dict' Dni. Regis nunc Quinto apud London videl't in paroch' scti. Bothi extra Aldersgate in Warda de Aldersgate in London predict' in quodam falso et proditor. libello quem ipse predict' Joh'es Matthews adtunc et ibid. malitiose advisate et proditor' Impressit Intitulat. "Ex ore tuo te Judico, Vox Populi Vox Dei," de et concernen. persona in vita Jacobi se'di nuper Regis Anglie &c. pretend' esse Princip' Wallie et post dicti nup. Regis decessum pretenden' esse et suscipien' sup' se stilum et tit'lum Regis Anglie per nomen Jacobi tertii ac de et concernen' Jure ad Coron' Magne Britannie malitiose advisate directe et proditorie per prædict' Impression' declaravit manutenuit et affirmavit scil't in una parte inde in his Anglicanis verbis sequent' videl't ; From 'the solemnity of the Chevalier's' (personam in vita Jacobi secundi nup' Regis Anglie &c. preten' esse Princip' Wallie et post dict' nup' Regis decessum pretenden' esse et suscipien' sup' se stilum et tit'lum Regis Anglie per no'en Jacobi tertii Innuendo) 'birth, the moral im-'possibility of putting an impostor on the nation' (Regnum Magne Brittanie Innuendo) 'after the manner pretended, and the disap-'pointment in the attempt of proving him' (dictam personam in vita Jacobi secundi nup' Regis Anglie &c. pretend' esse Princip' Wallie et post dict' nup' Regis decessum p'tenden' esse et suscipiens sup. se stilum et tit'lum Regis Anglie per no'en Jacobi tertii Innuendo) 'so, I' (seipsum Joh'em Matthews Innuendo) 'think 'it is demonstration, if hereditary right be 'any recommendation, he' (dictam personam in vita Jacobi scdi' nup' Regis Anglie &c. p'tens' esse Princip' Wallie et post dict' nup. decessu' p'tenden. esse et suscipien' sup. se stilum et tit'lum Regis Anglie per no'en Jacobi tertii Innuendo) 'hath that' (Jus hereditarium ad Coron. hujus Regni Innuendo) 'to plead 'in his favour; and all assertors of limited 'monarchy must allow, that ought to be pre-'ferred, if the person having it is endowed with 'other qualities fit to govern. And the great 'opinion all courts have of this unfortunate 'Prince' (dictam personam in vita Jacobi scdi' nup. Regis Anglie &c. pretenden' esse Princip' Wallie et post dict' nup. Regis decessu' p'tenden. esse et suscipien. sup. se stilum et tit'lum Regis Anglie per no'en Jacobi 'tii Innuendo) 'virtues shew he' (dictam personam in vita Jacobi sc'di nup. Regis Anglie pretens' esse Princip' Wallie et post dict. nup. Regis decessu' p'tenden. esse et suscipien. sup. se stilum et tit'lum Regis Anglie per no'en Jacobi tertii Innuendo) 'only wants to be known by 'us' (popul. hujus regni Innuend') 'to be ad-'mired; and that we' (popul. hujus rni. Innuen.) 'only want the enjoyment of him' (dictam personam in vita Jacobi scdi' nup. Regis Anglie, &c. pretend. esse Princip. Wallie et post dict' nup. Regis decessu. p'tenden. esse suscipien. sup. se stilum et tit'lum Regis Anglie per no'en Jacobi tertii Innuendo) 'to make 'us happy.' Et in altera parte inde in his Anglicanis verbis videlt. 'I' (seipm' Joh'em Matthews Innuendo) 'will conclude with three 'remarks. First, that every assertor of here-'ditary right' (Jus Hereditarium ad Coron. hujus Regni Innuendo) 'must be a Jacobite,' (Fautor personæ in vita Jacobi sc'di nup. Regis Anglie, &c. p'tens. esse Princip. Wallie et post dict' nup. Regis decessu. p'tenden. esse et suscipien. sup. se stilum et tit'lum Regis Anglie per no'en Jacobi tertii Innuendo.) 'Se-'condly, every Whig who makes Vox Populi 'his rule of government must be so,' (Innuendo Jacobit. Anglice, a Jacobite.) 'Thirdly, 'every assertor of limited monarchy must be 'so,' (Innuendo Jacobit. Anglice, a Jacobite.) 'The Chevalier' (dictam personam in vita Jacobi sc'di nup. Regis Anglie, &c. p'tend' esse Princip' Wallie et post dict' nup. Regis decessum p'tenden' esse et suscipien. sup. se stilum et tit'lum Regis Anglie per no'en Jacobi 'tii Innuendo) 'being endowed with all princely vir-'tues; so that all rights' * (omnia Jur. ad Coron. hujus rni' Innuendo) 'concur in him,' (dictam p'son. in vita Jacobi sc'di nup. Regis Anglie, &c. p'tens esse Princip' Wallie et post dict' nup. Regis decessum p'tenden. esse et suscipien. sup. se stilum et tit'lum Regis Anglie per no'en Jacobi 'tii Innuendo) contra Ligeanc' sue debit' contra pacem dict' D'ni Regis nunc Coron. et Dignitat. suas, necnon contra formam Statuti in hujusmodi casu nup. edit, et provis. Et Jur. predict. sup. Sacram' suum predict' ulterius p'sentant. qd. predict' Joh'es Matthews timor Dei in Corde suo non h'ens nec debit' Ligeanc' sue ponderans sed instigatione Diabolica mot' et seduct' ut falsus proditor contra dict' D'num Regem nunc supremum verum legalem et indubitat' D'num suum cordialem amorem et veram et debit' obedienc' fidelitat' et ligeanc' quas quilibet subditus dict. Dm'ni Regis nunc erga ip'm Dominum Regem gereret et de Jure gerere tenetur penitus subtrahens postea et post vicesim. quintum diem Martii Anno Dni' mill'imo septingent'imo sexto scil't eodem Decimo die Junii Anno Quinto supradicto apud London predict' in paroch. et warda predict' in quod'm altero f'lo et proditorio libello Intitulat. "Ex ore tuo te Judico, Vox Populi Vox Dei," quem ipse predict' Joh'es Matthews adtunc et ibid. malitiose advisate et proditorie impressit malitiose advisate directe et proditor. per Impression' ult. supradictam declaravit manutenuit et affirma-

* "Rights! He could not have any, supposing him king James's son; (which is not admitted) for his father, under whom he must claim, having broke his coronation oath, trampled on the rights and liberties of his subjects, turned Papist, and abdicated the throne, was very justly set aside by act of parliament." *Former Edition.*

vit qd. persona in vita Jacobi scdi' nup. Regis Anglie, &c. pretens. esse Princip. Wallie et post dict' nup. Regis decessu' p'tenden. esse et suscipien. sup. se stilum et tit'lum Regis Anglie per no'en Jacobi tertii Jus habet ad Coronam Magn. Britannie contra ligeanc' suam debit' contra pacem dict' Dm'ni Regis nup. Coron. et Dignitat. suas necnon contra formam Statut. in hujusmodi Casu nup. edit. et provis."

The Crier makes the usual proclamation, O yes, O yes, O yes! If any one can inform my lords the king's justices, the king's serjeant, the king's attorney general, or this inquest, now to be taken, of the high treason of which the prisoner at the bar stands indicted, let them come forth, and they shall be heard, for now the prisoner stands at the bar upon his deliverance; and all others that are bound by recognizance to give evidence against the prisoner at the bar, let them come forth and give their evidence, or else they forfeit their recognizance: and all jurymen of London, that have appeared, and are not sworn, may depart the Court for this time.

Clerk of Arraigns. John Matthews, hold up your hand. You of the jury look upon the prisoner, and hearken to his cause: he stands indicted by the name of John Matthews, of London, printer, for that he being a subject of our sovereign lord George, now king of Great Britain, France and Ireland, defender of the faith, &c. not having the fear of God in his heart, nor considering his due allegiance, but being moved and seduced by the instigation of the devil, as a false traitor, against our said lord the now king, his supreme, true, lawful and indubitable lord, altogether withdrawing that cordial love and true and due obedience, fidelity and allegiance which every subject of our said lord the king should bear, and, of right, ought to bear towards our said lord the king, after the 25th day of March, in the year of our Lord, 1706, viz. the 10th day of June in the 5th year of the reign of our now said lord the king, at London in the parish of St. Botolph without Aldersgate in the ward of Aldersgate at London aforesaid, in a certain false and treasonable libel, which he the said John Matthews then and there maliciously, advisedly and traitorously printed, intitled, "Ex ore tuo te Judico, Vox Populi Vox Dei," of and concerning the person in the life-time of James the second, late king of England, &c. pretending to be the prince of Wales, and after the decease of the said late king, pretending to be, and taking upon himself, the stile and title of king of England, by the name of James the third; and of and concerning his right to the crown of Great Britain, he did maliciously, advisedly, directly and traitorously, by the said printing, declare, maintain and affirm, in one part thereof, in these words following, viz. "From the solemnity of the chevalier's (meaning the person in the life-time of James the second, late king of England, &c. pretending to be the prince of Wales, and after the decease of the said late king pretending to be, and taking upon himself, the stile and title of king of England, by the name of James the third) birth, the moral impossibility of putting an impostor on the nation (meaning the kingdom of Great Britain) after the manner pretended, and the disappointment in the attempt of proving him (meaning the said person in the life-time of James the second, late king of England, &c. pretending to be the prince of Wales, and after the decease of the said late king, pretending to be, and taking upon himself, the stile and title of king of England, by the name of James the third) so, I (meaning himself the said John Matthews) think it is demonstration, if hereditary right be any recommendation,† he (meaning the said person in

† "This Matthews was a vain, weak, conceited young fellow, buoyed up by the Jacobites, and for small lucre printed their treasonable papers, and dispersed them among the ignorant common people—persons of sense despising their nonsensical doctrine of Hereditary Right, &c. Such idle stuff having been long since exploded, every one now seems striving who shall appear most zealous in asserting those principles which brought about the glorious Revolution, and the happy establishment of the present royal family.

"Mich. 12 Ann. Bedford's Treatise of Hereditary Right was held to be a libel, though it contained no reflection upon any part of the then government. Strange, vol. 2, p. 789.

"Mr. Bedford having been found guilty at Guildhall, London, Feb. 13, 1713, of writing, printing and publishing a scandalous and seditious libel, entitled, The Hereditary Right, &c. the Court, May 4, in Easter term, gave judgment, 'That he should be fined 1,000 marks, 'imprisoned for three years without bail or 'mainprize, and upon his delivery, to be bound 'in a recognizance with four sufficient sure-'ties in the sum of 5,000*l.* for his good beha-'viour during life; and that upon the next Fri-'day he was to be brought up, and shewn to all 'the Courts sitting in Westminster-hall, with 'a paper in his hat expressing the crime and 'the judgment, and was committed to the cus-'tody of the marshal.'.

"Upon Friday, Mr. Kettleby (one of the defendant's counsel) moved the Court upon a paper which was delivered in and read; it was under the privy seal signed by her majesty, and directed to the lord chief justice, the justices of the Court, the sheriffs of London and Middlesex, and marshal of the Queen's-bench, and imported a recital of the conviction and judgment; and that Mr. Bedford had humbly represented to her majesty by petition, That he was a clergyman of the Church of England, and prayed, that the ignominious part of the sentence might be remitted; 'These are there-'fore to require you, and every of you, not to 'put in execution that part of the judgment 'which is, that he be brought to the Courts in 'Westminster-hall, &c. and for so doing this

the lifetime of James the second, late king of England, &c. pretending to be the prince of Wales, and after the decease of the said late king pretending to be, and taking upon himself the stile and title of king of England, by the name of James the third) has that (meaning an hereditary right to the crown of this kingdom) to plead in his favour; and all assertors of limited monarchy must allow that ought to be preferred, if the person having it is endowed with other qualities fit to govern. And the great opinion all courts have of this prince's (meaning the said person in the lifetime of James the second, late king of England, &c. pretending to be the prince of Wales and after the decease of the said late king pretending to be, and taking upon himself the stile and title of king of England, by the name of James the third) virtues, shews he (meaning the said person in the lifetime of James the second, late king of England, &c. pretending to be the prince of Wales, and after the decease of the said late king pretending to be, and taking upon himself the stile and title of king of England, by the name of James the third) only wants to be known by us (meaning the people of this kingdom) to be admired.*

And that we (meaning the people of this kingdom) only want the enjoyment of him (meaning the said person in the lifetime of James the second, late king of England, &c. pretending to be the prince of Wales, and after the decease of the said late king pretending to be, and taking upon himself the stile and title of king of England, by the name of James the third) to make us happy." And in another part thereof in these words following, viz. "I (meaning himself the said John Matthews) will conclude with three remarks. First, That every assertor of hereditary right (meaning hereditary right to the crown of this kingdom) must be a Jacobite (meaning a favourer of the person in the lifetime of king James the second, late king of England, &c. pretending to be the prince of Wales, and after the decease of the said late king pretending to be, and taking upon himself the stile and title of king of England, by the name of James the third.) 2dly, That every Whig who makes 'Vox Populi' his rule of government, must be so (meaning a Jacobite). 3dly, Every assertor of limited monarchy must be so, (meaning a Jacobite), the chevalier (meaning the person in the lifetime of James the second, late king of England, pretending to be prince of Wales, and since the decease of the said late king pretending to be, and taking upon himself the stile and title of king of England, by the name of James the third) being endowed with all princely virtues, so that all rights (meaning all rights to the crown of this kingdom) concur in him" (meaning the said person in the lifetime of James the second, late king of England, &c. pretending to be prince of Wales, and after the decease of the said late king pretending to be, and taking upon himself the stile and title of king of England, by the name of James the third), against his due allegiance, against the peace of our sovereign lord the king that now is, his crown and dignity, and also against the form of the statute in that case made and provided. And further, that the said John Matthews, the fear of God in his heart not having, nor his due allegiance considering, but being moved and seduced by

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'shall be your, and every of your, sufficient 'warrant.'

"The Court immediately made a rule to discharge the marshal of his attendance with him that day, and said they would consider how the judgment ought to be entered upon. Gilbert's Cases, 297.

"This Mr. Bedford (formerly rector of Wickering, in the diocese of Peterborough, and fellow of St. John's, Cambridge,) was a Nonjuring clergyman, and though convicted as above, was thought to have had little or no hand in writing the book, he not being esteemed equal to the performance. It was supposed to have been wrote by Mr. Harbin, a Nonjuror, (a west country gentleman) who had been formerly chaplain in the old lord Weymouth's family. The preface to it was said to be wrote by Mr. Downes, a Nonjuror, of Baliol College at Oxford. It is imagined they had the perusal of lord Hales's MSS. of the Pleas of the Crown, by the passages they have taken from thence. Those obnoxious passages were omitted by Mr. Emlyn, when he published that work, by the advice of two great men in the law.

"Mr. Bedford, by not discovering the author, &c. was a great gainer in the end; for setting up a boarding-house near Westminster-school, for young gentlemen, by the help of the above persons, and others of that party, he got a considerable fortune; which he left to his son, Dr. Bedford, a physician in London, who died a few years ago."—*Former Edition.*

See mention of Bedford in Mr. Lechmere's Speech January 9, 1716, on the impeachment of the Scots' lords, p. 762, of this volume.

* "Only wants to be known by us to be admired. The more he was known in Scotland, in the year 1715, the more he was despised; being a great bigot to the Popish religion, refusing to appear at any place of Protestant worship.—A great coward, flying before the king's troops, and making no stand; that even the chiefs in that rebellion looked on him, at last, in a contemptible light.—And further he says, 'We only want the enjoyment of him to 'make us happy.' What, would a Popish bigot, and a tool of France make us happy! would Popery and slavery make Englishmen happy! We are now as happy under our present most gracious sovereign king George 3, as our hearts can desire (and were so at that time;) and God forbid we should ever change our happiness for misery and ruin; which must be the case, if ever God, for our sins, should scourge us with a Popish abjured Pretender." *Former Edition.*

the instigation of the devil, as a false traitor, against our said lord the now king, his supreme, true, lawful, and indubitable lord, altogether withdrawing that cordial love, and true and due obedience, fidelity and allegiance, which every subject of our said lord the now king, towards our said lord the king should bear, and of right ought to bear, afterwards and after the 25th day of March, in the year of our Lord 1706. to wit, the same 10th day of June, in the fifth year aforesaid, at London aforesaid, in the parish and ward aforesaid, in a certain other false and traitorous libel, entitled, "Ex ore tuo te judico, Vox Populi Vox Dei," which the said John Matthews, then and there maliciously, advisedly, and traitorously printed; and by the last abovesaid printing, maliciously, advisedly, and traitorously did declare, maintain and affirm, that the person in the lifetime of James the second, late king of England, &c. pretending to be the prince of Wales, and after the decease of the said late king pretending to be, and taking upon himself the stile and title of king of England, by the name of James the third, hath a right to the crown of Great Britain, against his due allegiance, against the peace of our said lord the now king, his crown and dignity, and also against the form of the statute in such case made and provided.

How sayest thou, John Matthews, art thou Guilty of this Indictment whereof thou standest indicted, or Not Guilty?—*Prisoner.* Not Guilty.

Clerk of Arraigns. How wilt thou be tried?

Pris. By God and my Country.

Cl. of Arr. God send thee a good deliverance.

Foreman of the Jury. My lord, we humbly pray the Court may be kept quiet, or it will be impossible for us to hear the evidence.

Lord Chief Justice. Officer, make proclamation for silence.

Crier. O Yes, O Yes, O Yes! My lords the king's justices strictly charge and command all manner of persons to keep silence, upon pain of imprisonment.

L. C. J. Gentlemen of the king's counsel, you may proceed.

Mr. *Bootle* (afterwards sir Thomas Bootle). May it please your lordship, and you gentlemen of the jury, I am counsel in this case for the king. The prisoner at the bar stands indicted of high-treason, upon the statute made in the 6th year of the late queen Anne's reign, and it is for maliciously, advisedly, and directly, by printing, declaring, and affirming, that the Pretender hath a right and title to the crown of these realms.*

My lord, the Indictment sets forth, that he being a subject of our sovereign lord George, now king of Great Britain, France, and Ireland, not having the fear of God in his heart, nor considering his due allegiance, but being moved and seduced by the instigation of the devil, as a false traitor, against our said lord the now king, his supreme, lawful, and indubitable lord, altogether withdrawing that cordial love, and true and due obedience, fidelity and allegiance, which every subject of our said lord the king should, and of right ought to bear towards our said lord the king, after the 25th of March, in the year of our Lord 1706, (to wit, the 10th day of June, in the 5th year of his present majesty's reign, at London, in the parish of St. Botolph, without Aldersgate, in the ward of Aldersgate, at London aforesaid, in a certain false and treasonable libel, which he then and there maliciously, advisedly, and traitorously printed, entitled, "Ex ore tuo te judico, Vox Populi, Vox Dei," of and concerning the person in the life-time of king James the 2nd, late king of England, &c. pretending to be the prince of Wales, and after the decease of the said late king pretending to be, and taking upon himself the stile and title of king of England, by the name of James the 3rd, and of and concerning his right to the crown of Great Britain, he did maliciously, advisedly, directly, and traitorously, by the said printing, declare, maintain, and affirm, in one part thereof in these words, "From the solemnity of the Chevalier's (meaning the Pretender's) birth, the moral impossibility of putting an impostor upon the nation, (meaning the kingdom of Great Britain), after the manner pretended, and the disappointment in the attempt of proving him so, I (meaning himself the said John Matthews) think its demonstration, if hereditary right be any recommendation, he (meaning the Pretender) hath that (meaning an hereditary right to the crown of this kingdom), to plead in his favour; and all assertors of limited monarchy must allow, that ought to be preferred, if the person having it is endowed with other qualities fit to govern. And the great opinion all courts have of this prince's (meaning the Pretender's) virtues, shews he (meaning the Pretender) only wants to be known by us to be admired, and that we (meaning the people of England) only want the enjoyment of him to make us happy."

My lord, there is laid to be likewise in another part of this libel, that he did maliciously, advisedly, and traitorously, by the said printing, declare, maintain, and affirm, in these words following, viz. "I (meaning himself the said John Matthews) will conclude with these remarks. First, That every assertor of hereditary right (meaning hereditary right to the crown of this kingdom) must be a Jacobite (meaning a favourer of the Pretender). 2dly, That every Whig who makes "Vox Populi" his rule of government, must be so (meaning a Jacobite). And, 3dly, Every assertor of limited monarchy must be so, (meaning a Jacobite), the Chevalier (meaning the Pretender) being endowed with all princely virtues; so that all rights (meaning all rights to the crown of this kingdom) concur in him (meaning the Pretender)." This is laid to be contrary to his allegiance, against the peace of our sovereign

* See Leach's Hawkins's Pleas of the Cr. book 1, c. 17, § 108.

lord the king that now is, his crown and dignity, and also against the form of the statute in that case made provided.

Gentlemen, the Indictment further sets forth, That the defendant, as a false traitor against our said lord the now king, his supreme, lawful, and indubitable lord, altogether withdrawing that cordial love, and true and due obedience, fidelity and allegiance, which every subject of our said lord the now king, towards our said lord the king, should and of right ought to bear, afterwards and after the 25th of March, in the year of our Lord 1706 (to wit), the same 10th day of June, in the 5th year aforesaid, at London, in the parish and ward aforesaid, in another false and traitorous libel, entitled, "Ex ore tuo te judico, Vox Populi Vox Dei," which he the said John Matthews then and there maliciously, advisedly, and traitorously printed, and by the last abovesaid printing, maliciously, advisedly, and traitorously did declare, maintain, and affirm, that the Pretender hath a right to the crown of Great Britain; and this is laid to be contrary to his allegiance, against the peace of our said lord the now king, his crown and dignity, and also against the form of the statute in that case made and provided.

To this, gentlemen, the prisoner hath pleaded Not Guilty; we on the part of the prosecution shall call our witnesses to prove the facts, and if we do, I do not doubt you will think it your duty to find him Guilty.

Att. Gen. (Mr. Lechmere, afterwards lord Lechmere). My lord, and you gentlemen of the jury. The Indictment which hath been opened to you, is an Indictment against John Matthews, the person at the bar, for high-treason. This Indictment is founded upon an Act of Parliament made in the 6th year of the late queen, the title of it is, "An Act for the Security of her Majesty's Person and Government, and of the Succession to the Crown of Great Britain in the Protestant Line." This act recites, there had been a former act, made in the 4th year of the reign of her then present majesty, in which it is mentioned, by reason of the Union of England and Scotland, it became necessary to make divers alterations in that act. The first provision made by this law is in these words, that "if any person or persons shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm, that our sovereign lady the queen that now is, is not the lawful and rightful queen of these realms, or that the pretended prince of Wales, who now stiles himself king of Great Britain, or king of England, by the name of James the 3rd, or king of Scotland by the name of James the 8th, hath any right or title to the crown of these realms; or that any person or persons hath or have any right or title to the same, otherwise than according to an act of parliament made in England, in the first year of the reign of their late majesties king William and queen Mary, of ever blessed and glorious memory, entitled, "An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown;" and one other act made in England in the 12th year of the reign of his said late majesty king William the 3rd, entitled, "An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject;" and the acts lately made in England and Scotland mutually for the Union of the two kingdoms; or that the kings or queens of this realm, with and by the authority of parliament, are not able to make laws and statutes of sufficient force and validity to limit and bind the crown, and the descent, limitation, inheritance and government thereof; every such person or persons shall be guilty of high-treason, and being thereof lawfully convicted, shall be adjudged traitors, and shall suffer pains of death, and losses and forfeitures as in cases of high-treason."

Gentlemen, the facts that are enumerated in this clause of the statute I have read to you; at the time when this law was made, those crimes, though crimes of a very high nature, yet were crimes of a lower degree, as misdemeanors, &c. But for the security of the person of the late queen and her government, and for the securing of the succession to the crown in the Protestant line, the wisdom of parliament thought it necessary, to deter people from such crimes, to inflict the punishment due for high-treason. The charge of this Indictment read to you, is one of those several instances made high-treason by this act. The substance of the Indictment is, that the prisoner, the 10th of June last, did maliciously, advisedly, and directly, in a certain libel, entitled, "Ex ore tuo te judico, Vox Populi Vox Dei," which he caused to be printed, he did by that impression declare, maintain, and affirm, that the person described by the act of parliament to be the pretended prince of Wales, had a right to the crown of these realms.

Gentlemen, the words taken out of the libel have been read to you, and stated to you upon the opening of the Indictment, and I believe no doubt or question arises upon the proper construction of those words, but the prisoner is Guilty of high-treason.—The Chevalier, the name made use of to describe the person, the circumstance by which he is described, are of such notorious a kind, so well known, that it is impossible for any one not to understand them of the person described in the act of parliament.—The law directs, that to involve any person in the crime of high treason, that the writing with which he is charged, should be a direct declaring, maintaining, and affirming: this is what the law prescribes. In the first sett of words, it is not a bare assertion only, but the very words are, that it is a demonstration, that if hereditary right be any recommendation, he hath that to plead in his favour. This is as strong an instance, and as full and clear affirming as words can invent. In the latter part, by way of conclusion from the arguments of his books, he there affirms, all

rights concur in this person; all right to the crown of these realms: it must be so understood, it is impossible to put any other construction upon it. I conclude from the premises, that all rights to the crown of this kingdom concur in this person. The act of parliament makes it treason to affirm, that the person therein described hath any right to the crown of these realms: in the beginning he affirms, that he hath an hereditary right; in the conclusion there is a positive affirmation, that not only that, but all other rights concur in him.

Gentlemen, It being beyond all doubt, as I apprehend, that the words set forth in the libel amount to high-treason, according to this act of parliament; it is therefore incumbent upon us that prosecute for the crown, to shew that he is the person that did print the libel set forth in this Indictment; that he did it with malice, maliciously, is one of the circumstances the act of parliament requires; that he did not do it ignorantly, or inadvertently, but advisedly; as to that, our evidence will be thus: the prisoner lived with his mother in the city of London, who kept a printing-house, whether he be an apprentice or partner is not material; he is an inhabitant there, and belongs to that printing house, and lives with his mother who keeps the printing-house. The government having on former occasions had this young man under their notice for practices of this kind, the 6th of June last they received information of the traitorous libel set out in the indictment that was dispersed much about that time. Having received information that the prisoner was concerned in printing of it, a warrant was issued for apprehending him; accordingly being taken, there was found in his pocket one entire libel, bearing the title, and importing the words set forth in the indictment. In his lodging-room there were found two half-sheets; the libel contained one whole sheet and no more. Besides that in his pocket, in his lodging-room were found two first half-sheets of this libel; there were likewise another entire libel found in his lodging-room, and eight or ten half-sheets of the latter part of the libel, which were superfluous parts of the impression, as we believe.

My lord, on the view of these libels when they come to be looked on, on the view of the two half-sheets, and on the proof we shall give you concerning them, it will appear that these two half-sheets of the first part of the libel, that they are the very proof-sheets from which the impression of this libel was worked off. There are other circumstances appearing in the papers themselves, that to your observation I do not doubt will appear so; but especially when it comes to be explained by masters in the art of printing, who are better able to give an account of them; then it will appear that these were the very proof-sheets of the impression after it was wrought off. My lord, there is, in the language of printers, a right and wrong imposing; one of these proof-sheets appears to be wrong imposed, the other is right imposed; the impression was varied, as will appear to you by the wrong imposition of the first half-sheet, which occasioned another imposition rightly imposed, and from which the impression of the libel was wrought off.

Gentlemen, on these two half-sheets there are the usual mistakes and corrections, such as the inverting letters, and other such literal mistakes usual in this trade, and in working of printed papers.

Gentlemen, the types and letters of these proof-sheets will appear to you to be the very types and letters of this printing-house, to which this young man belonged; and, gentlemen, upon those proof-sheets, there is an addition and interlineation of the word *it*, which we shall prove to be the hand-writing of the prisoner himself.

Gentlemen, It is observable from the superfluous half-sheets, in point of evidence, that arises from the facts themselves as discovered in his possession: if these papers had come into his possession as libels dispersed, it is reasonable to imagine they would have been found not imperfect sheets, a part of this libel, but entire and complete. It is usual and common, where they print off by reams, there may be a superfluity or overplus sheets: they do not always hit the same number of the same impression. It frequently happens there may be a superfluity of sheets or half-sheets; these, with other circumstances, as will appear to you, do concur, and in themselves carry a very high evidence, strong, if not violent presumption, that he was the printer of this libel, or at least privy and concerned, or co-operated in the printing thereof; and that is the same; for if many are concerned in printing a treasonable libel, they are all guilty of the treason. But it will be incumbent on the prisoner, if he can acquit himself from the weight of this evidence, which must fall upon him from these circumstances of the papers being found upon him, being found in his possession in the very printing-house; it will be incumbent on him to acquit himself, and to account for these things, to shew how he came by them; if by any other means than as by these circumstances, we shall endeavour to prove. My lord, these circumstances appearing, on the finding the libel on the prisoner, on his being apprehended, being under examination—whatever his defence may be now, let him make the best he can by law; I am for giving him the full liberty the law allows—but I mention it as a proof, when under an examination, and disposed to a behaviour that might have prevented this trial, very far from denying the printing of these papers when they were produced, if my instructions are true, what he said amounted to an acknowledgment and confession that he printed them. He endeavoured to excuse it from his necessity; sometimes gave overtures and reasons to believe that he would discover the person that put the manuscript into his hands, and set him to work. But throughout his whole examination at that

time, it will appear on that occasion, if my instructions are right, so far was he from denying himself to be the printer, that he confessed he was the printer of those papers.

Gentlemen, I shall not rest it on this, though if made out, I apprehend is very full; but we have the very persons to produce to you in evidence who were employed by the prisoner, paid by the prisoner for the printing of these very libels we shall offer to you in evidence: that about a month or six weeks before he was discovered, I apprehend this might be about the latter end of May, he, early in the morning, about three or four o'clock, (the exact time I will not undertake to prove) called up the persons I shall offer as witnesses, told them he had an impression to work off; one of them will prove they saw him compose the press from the manuscript; they remember the circumstance of his making the wrong imposition of the first part of this impression, and the having wrong imposed it (as the phrase is): he went out, and, on his return, he swore he had wrong imposed it, and he must impose it a second time; and accordingly he made the second imposition, which is the paper we have to produce; he directed them to work it off while the prisoner stood by, and did the office which boys do, for dispatch and secrecy; he took the papers from the press; there were about a thousand wrought off complete of the first and second part of the libel; and he paid them for it, and took the impression into his own possession; he paid them 14*s.* part to the witness, and the other part to the apprentice. Gentlemen, if we prove this, there can no doubt remain with you, but that it will prove him fully, and to your entire satisfaction, that he is the printer of these papers; that he hath done it maliciously. The act of parliament hath made that a circumstance; but no other proof is requisite by law to be made, than by that which arises from the nature of the libel itself. A traitorous libel, calculated to raise sedition and rebellion, imports malice: a libel pretending to condemn the title of the crown in his majesty, and asserting it to be in the Pretender, carries malice of the highest nature: and if we shew he had the direction of the press, he composed it, afterwards corrected it, it cannot remain a doubt with you as to the other circumstance, but that it was done advisedly.

Gentlemen, I have stated to you the circumstance of the evidence, and I have done it without any aggravation; I do not think it wants it; if the evidence comes out as I have laid it before you, it will carry its own force, and you will give it its due weight. I am sorry for any one that falls under such an accusation, but more especially for one so young; but, gentlemen, compassion is neither your business or mine; that belongs to another place, as the case shall appear. I will call our witnesses, and prove what I have opened to you: and if I do, you will do your country justice, as well as justice to the king, to find him guilty.

Serj. *Cheshire.* May it please your lordship, and you gentlemen that are sworn, I am counsel of the same side with the king.—Mr. Attorney General hath opened the Charge so very fully, that it will be unnecessary for me to spend time in adding to it. But, gentlemen, since this is a prosecution on an act of parliament, and for aught I know this the first instance of a trial of one discovered and brought before you in judgment upon this act, it may be necessary for me to add a few words in relation to it. And, gentlemen, a man cannot but be sensibly concerned in his mind, that, after 14 years that this act hath been in force, the first instance should be a young boy of this person's age; I hope, notwithstanding, when you hear the evidence laid before you, you will be sensible that the real author is a person of greater maturity and proficiency; and this poor youth worked up to be an obstinate instrument in the hands of some greater person; and God forbid that such people, by their artfulness and cunning, should get off, by making use of such as are more apt to move compassion.

Gentlemen, you will consider, as you have this young man in judgment, so you have the rights of the king of England, under whom we live; and that you will do fair and right between the king and his subjects, is what we expect.

Gentlemen, this must be an offence against an act of parliament, made in the fourth year of the late queen, and in the sixth year whereby it was declared, that if any person or persons shall, maliciously, advisedly, and directly, by writing or printing, maintain and affirm, that our sovereign lady the queen that now is, is not the lawful and rightful queen of these realms, or that the pretended Prince of Wales, who stiled himself king of Great Britain, or king of England, by the name of James the 3d, or king of Scotland, by the name of James the 8th, hath any right or title to the crown of these realms, or that any other person or persons have or hath any right or title to the same, otherwise than according to an act of parliament made in the first year of the reign of their late majesties king William and queen Mary, of ever blessed and glorious memory, entituled, An Act declaring the rights and liberties of the subject, and settling the succession of the crown; and one other act, made in the 12th year of the reign of his said late majesty king William the 3d, entituled, An Act for the further limitation of the crown, and better securing the rights and liberties of the subject; and the acts lately made in England and Scotland mutually for the union of the two kingdoms; or that the kings or queens of this realm, with and by the authority of parliament, are not able to make laws and statutes of sufficient force and validity to limit and bind the crown, and the descent, limitation, inheritance, and government thereof: Every such person or persons shall be guilty of high-treason, and being thereof lawfully convicted, shall be ad

judged traitors, and shall suffer pains of death, and all losses and forfeitures as in cases of high-treason. And the offence here is the declaring, maintaining, and affirming, that the Pretender hath any right or title to the crown of England; that, gentlemen, give me leave to say, is the treason in this act of parliament; but, gentlemen, as it stood on the old acts of parliament, that that made the treason must be proved by open deeds, as we usually express it by overt acts.—This treason is to be determined two ways, that is, by printing or writing; it is treason for any person or persons to declare, maintain, and affirm, that the Pretender hath any right or title to the crown of these realms; that declaration must be made good by printing or writing; the case before you is printing; that printing must have these qualifications: It must be maliciously, it must be advisedly, and the declaration must be directly.

Gentlemen, it is an offence made up of these gradations: He must do it maliciously; he must do it advisedly; he must do it directly; and that which is to be done so, is the maintaining and affirming that the Pretender hath a right to the crown of this kingdom: If this be thus proved by printing, then, gentlemen, this is the offence which is made high-treason by this act of parliament. Gentlemen, it is necessary a little to open to you who is meant by the Chevalier, because you find by the libel, he is called the Chevalier. Gentlemen, as it is known to you all, Is here in England, he is called the Pretender to the crown, very properly in many acts of parliament; so, on the death of the late king James he assumed the title of James the 3d king of England, and James the 8th of Scotland. That being resented, justly resented by the crown of England, to those princes and states that seemed to favour it, they withdrew that title, and he assumed the name of the chevalier de St. George. I believe it is as well known that the Pretender was meant by the name of Chevalier, as any prince whatsoever is known by his title. As to the person, we think it is very plain, the person named the Chevalier in the libel, to be the very same person that pretended to be the prince of Wales in the life-time of king James the 2d; and after his decease, that assumed to himself the title of James the 3d king of England, and the 8th of Scotland. As this is the person, so you will find a direct maintaining and affirming that he hath a right to the crown of these realms; That will appear by the libel. I would observe by the way, that this way of libelling, it well became the legislature to guard against: because it is a sly, artful way of poisoning the minds of people, and in such a manner as is not easily discoverable. Here it is necessary first, to set out the virtues of the person; you are next, from the consideration of these virtues, necessarily moved with pity and compassion, that a person of those virtues should be kept out of his right. He says, all rights concur in him, who, he says, is a person endowed with all princely virtues; If he hath all rights concur in him, and is a person of those princely virtues, is it not a pity, and doth it not move compassion, that this person is kept out of his right? It is a natural inference. Then who is the person he is speaking of, the person whose birth was so very solemn, that it was impossible to prove him an impostor: These are the words of the libel before you. And then, gentlemen, which comes more to the purpose, he particularly and positively affirms, that if hereditary right be any recommendation, he hath that to plead in his favour: this is in the first part of the libel. In the latter part he makes three remarks; in these three remarks he sums up all the right any prince can have. He says, hereditary right, that is one; the voice or choice of the people, that is another; and a limited monarchy the third; he says he hath all these rights concur in him; he being endowed with all princely virtues, therefore all these rights concur in him. Gentlemen, it hath been rightly opened by Mr. Attorney General, that the offence is to declare, that he hath any right; but he hath maintained all rights whatsoever concur in him; he hath an hereditary right, he hath a right by the choice of the people, he hath a right, as it is a limited monarchy. This, gentlemen, is the declaration: and we think upon the reading it, you will be satisfied, and I dare say my lords the judges will direct you, that this is a direct declaring that he hath a right to the crown of these realms.

Gentlemen, it must be proved it was done maliciously and advisedly: if we make out what Mr. Attorney General hath opened, that it was done with this deliberation, that he paid for it, that he directed it, that he was the person who composed it, first took off the sheets from the press, which is usually done by a boy, and they call that boy the devil; it is the devil's work, as you will hear by the witnesses, but that was done by him for haste, expedition and secrecy too. Gentlemen, there was, as it will appear by the witnesses, a thousand of each part printed off: it is to be feared they were dispersed, and God knows what mischief they may have done; a few were found upon him, it lies upon him to account how he came by them; we will call our witnesses, &c.

Mr. *Lutwych.* Call John Hutchins and Thomas Roberts, the messengers that seised these things upon him.

John Hutchins and *Thomas Roberts* sworn.

Mr. *Ketelbey.* My lord, we pray in behalf of the prisoner, that the witnesses may be kept out of the hearing of one another. (Which was ordered accordingly.)

Prisoner. My lord, I desire that the witnesses may be kept out of the hearing of one another.

L. C. J. *King.* If there are any more of the witnesses in Court, they must stay out till they are called.

John Hutchins.

Attorney General. Shew him the libel.

Look upon the rest of the half-sheets, Mr. Hutchins; you have the libel in your hands?

Hutchins. Yes.

Att. Gen. Have you looked upon them all?

Hutchins. Yes, Sir, upon most of them.

Att. Gen. Are not any of them marked that you know of?—*Hutchins.* Yes, Sir.

Att. Gen. How many are they that are marked by you?

Hutchins. They are all marked by me.

Att. Gen. Hold them in your hand, look upon those libels, you say they are marked by you; do you know any thing of those libels, and where you had them?

Hutchins. Some I found in Mr. Matthews's pocket; the rest I found in his room.

Att. Gen. Let us know the time when.

Hutchins. The 7th of July last.

Att. Gen. Where, Sir?

Hutchins. In his pocket, and in his room.

Att. Gen. Where.

Hutchins. At the printing-house of his mother in Little Britain.

Att. Gen. At his mother's printing-house? Which was found in his pocket?

Hutchins. This, Sir.

Att. Gen Is that an entire libel that was found in his pocket?

Hutchins. These two make an entire libel.

Att. Gen. Those were found in his pocket?

Hutchins. Yes, Sir.

Att. Gen. Where were the rest found?

Hutchins. In his room.

Att. Gen. Why call you it his room?

Hutchins. In his room where he lay, in his bed-chamber.

Att. Gen. They were found in his bed-chamber?

Now point to us those that were found in his bed-chamber.

Hutchins. The two half-sheets; two proof-half-sheets.

Att. Gen. There is another.

Hutchins. Yes, Sir, that is one that was found in his pocket.

Att. Gen. Sir, can you be positive those are the very papers you found in his pocket, and in his room?—*Hutchins.* I am very positive.

Att. Gen. I think you say you marked them.—*Hutchins.* Yes.

Att. Gen. Did you look on those marks?

Hutchins. Yes, Sir.

Att. Gen. Now look upon the rest of the papers you have in your hands, and let us know what they are.

Hutchins. These were taken out of his room.

Att. Gen. Look upon those, that bundle you have in your hand.

Hutchins. These are more that were taken out of his room.

Att. Gen. These are the imperfect superfluous sheets; do not put them together, keep them distinct.—*Hutchins.* Sir, I shall.

Att. Gen. You were saying, they were found in his room?—*Hutchins.* Yes, Sir, in his room.

Att. Gen. Was there any conversation between you and the prisoner the day he was in your custody, or at any other time, touching these libels?

Hutchins. He owned they were all his.

L. C. J. How?

Hutchins. I asked him if they were his, he told me they were.

Att. Gen. That was at the time he was taken; afterwards had you any other discourse with him at the time of shewing him his papers?—*Hutchins.* He never denied them.

Mr. *Lutwych.* Do you know of any thing that passed between you, at the time of his commitment?

Hutchins. I brought him to Newgate. When I came for him, I suppose, says he, I am going to Newgate, and that a bill of high-treason will be found against me? Yes, says I, that there is already. I advised him to tell the author, and it would be better for him. He said, I know I shall be hanged; but I have nothing to do, but let the money fly to get a good jury, that is all: He said those that set him to work, were a pack of dogs, good for nothing, but over a bottle of wine, or a pot of beer.

Mr. *Lutwych.* Repeat the first words again.

Hutchins. He said that he knew he should be hanged, he had nothing to do, but to let the money fly, to get a good jury; they were a pack of dogs that set him to work, good for nothing, but over a bottle of wine, or a pot of beer.

Serjeant *Cheshire.* Who was with you at the time of the seizing of these papers?

Hutchins. Mr. Roberts.

Mr. *Hungerford.* You say you took these things at the printing-house?

Hutchins. Yes, Sir.

Mr. *Hungerford.* In whose name was the printing-house kept?

Hutchins. It was kept by his mother, or by his brother.

Mr. *Ketelbey.* You are sure that these very papers you delivered in, are the same numerical papers you seized either in his lodging-room, or in his pocket?

Hutchins. These are the very same.

Mr. *Ketelbey.* From the day that you seized them, have they been in your custody, or do you only depend on the remembering of the mark?

Hutchins. I depend on the remembering of the mark.

Mr. *Ketelbey.* They have not been in your custody ever since?—*Hutchins.* No, Sir.

Mr. *Ketelbey.* When did you mark those you found in the room? at the same time you seized them?

Hutchins. I marked them after I went out of the room, before I delivered them.

Mr. *Ketelbey.* Were they in your custody constantly from the time of your first seizing them, till you marked them? Had nobody an opportunity of altering them?

Hutchins. Yes, they were. Nobody, except the other messenger, meddled with them.

Mr. *Ketelbey.* And can you take upon you to say, the other messenger never altered them?

Hutchins. I am sure he never altered them; for he was never out of my sight.

Prisoner. I desire to ask Mr. Hutchins, whether he took them out of my pocket or in my room, or no. I am sure Mr. Roberts took them, I see him. (Here the prisoner behaved in a passion.)

L. C. J. You shall have a fair trial according to the laws of England, and as you expect a fair trial, therefore it is expected that you behave yourself as you ought.—Who took them out of his pocket?

Hutchins. Mr. Roberts.

L. C. J. Where was you?

Hutchins. Standing at the door.

Att. Gen. Did you see them taken out of his pocket?—*Hutchins.* Yes.

Att. Gen. Had you them in your hand?

Hutchins. Yes, Sir.

Att. Gen. Did you keep them in your hand?

Hutchins. Yes.

Mr. *Hungerford.* How far was you from Mr. Roberts when he took them out of his pocket?—*Hutchins.* I was at the door.

Mr. *Hungerford.* Could you read them at that distance?—*Hutchins.* No.

Prisoner. You took them on the ground?

Hutchins. He took them out of your pocket. —He laid your coat down, and laid the papers upon them.

Mr. *Hungerford.* What posture was the prisoner in, when you and Mr. Roberts came into the room?

Hutchins. He was in bed when Roberts came in, and just getting out of his bed when I came in.

Mr. *Hungerford.* Had you any candle?

Hutchins. It was day-light, between eight and nine o'clock in the morning.

Prisoner. My lord, I desire to know how many papers were found in my pocket?

Hutchins. Two or three.

Prisoner. I desire to know if all these papers were taken in this room?

Hutchins. Some, two or three were found in a box in another room? but he said it was his room and his box.

Prisoner. Which of those papers were taken in another room?—*Hutchins.* I cannot tell.

Mr. *Ketelbey.* Were all those papers taken in the room where he lodged?

Hutchins. Most of them where he lay.

Mr. *Ketelbey.* Where were the rest taken?

Hutchins. In the box in another room.

Att. Gen. Whose room was that?

Hutchins. He said it belonged to him.

The papers shewn him.

Mr. *Ketelbey.* Where were these papers produced?

Hutchins. Most of them in his room.

Att. Gen. Look upon them again, can't you tell which were found in his pocket, which in the room where he lodged, and which in the room adjoining? Have you not marked them?

Hutchins. I can't tell which were taken in the other room.

Att. Gen. Shew him the two proof-sheets. Look upon them, and recollect and tell us, if you can with certainty, whether these were found in his pocket, in his lodging-room, or where else?

Hutchins. Yes, Sir—These were both taken in his room.

Att. Gen. In his lodging room?

L. C. J. Or in the box in the other room? I ask you, do you know certainly where they were taken?

Hutchins. I am not sure whether they were taken in the one room, or the other.

Mr. *Lutwych.* What was that room you call the other room?

Hutchins. He called that other room his, and said all that was there was his.

Prisoner. What room was I taken in?

Hutchins. In your bed-chamber.

Mr. *Hungerford.* Is there a distinct door to that other room where the box was?

Hutchins. There is a room, and a distinct door to it.

Mr. *Hungerford.* Did that door open into the room that was his bed-chamber?

Hutchins. No.—It opened in his bed-chamber; you go through his bed-chamber to it.

Prisoner. Was you there when Mr. Roberts came to my chamber, when I was in bed?

Hutchins. No.

Mr. *Hungerford.* Was there no other opening to the room where the box was?

Hutchins. No, Sir.

L. C. J. You say it was found in his pocket; in his coat-pocket, or his breeches-pocket?

Hutchins. In his coat-pocket, my lord.

Mr. *Hungerford.* Were there one and the same mark to the papers you found in his pocket, and the other papers?

Hutchins. There were the two first letters of my name to those that were not perfect, and my whole name to the perfect ones.

Mr. *Hungerford.* Is there not some of the papers of the same mark?

Hutchins. My name is at length, not to all.

Mr. *Hungerford.* To any?

Hutchins. Yes, Sir.

Mr. *Hungerford.* Then if I take him right, there was the same mark to some of the papers taken out of his pocket, and that were took out of his room.

L. C. J. By which mark do you distinguish between the papers?

Hutchins. Some I marked with the same mark.

L. C. J. How do you distinguish?

Hutchins. Because I marked those found in his pocket, 'taken in his pocket;' those taken in the room, 'taken in the room.'

Att. Gen. Read the words you have written.

Hutchins. "Taken in Mr. Matthews's room the 7th of July."

Att. Gen. Whose writing is that?

Hutchins. My own.

Att. Gen. Were those taken out of his pocket, or in his room?

Hutchins. In his room.

Att. Gen. Do you distinguish between the room he lay in, and the other room?

Hutchins. No, I can't.

Att. Gen. Look upon those marked, 'taken out of his pocket.'

Hutchins. Taken out of his pocket?

Att. Gen. Read.

Hutchins. 'This taken out of his pocket by me and Roberts.'

Att. Gen. Whose hand-writing is that?

Hutchins. My own name is my own hand-writing, but the rest not.

Att. Gen. Are you positive that paper was taken out of his pocket?

Hutchins. Yes, I am positive.

Att. Gen. Keep that distinct.

Mr. *Ketelbey.* You say the name at length is your hand-writing, but the words not?

Hutchins. No, Sir.

Mr. *Ketelbey.* Who wrote them?

Hutchins. The other messenger.

Mr. *Ketelbey.* How long after?

Hutchins. Two or three hours.

Prisoner. My lord, I desire to know how far he carried them, before they were marked.

Hutchins. I carried them to the Cock-pit.

Mr. *Ketelbey.* Did the other messenger carry none?

Hutchins. Yes, he carried some.

L. C. J. Were they taken out of the room, before they were marked?

Hutchins. Yes, my lord.

Thomas Roberts sworn.

Att. Gen. Mr. Roberts, was you present with Hutchins when any papers were seized?

Roberts. I went into the room before Hutchins was there. I secured his sword.

L. C. J. Was his sword in his room?

Rob. Yes, my lord. Then I secured his coat, and secured his papers.—Then came in Mr. Hutchins; so with that Mr. Hutchins turns round and goes into another room, and brings two or three papers, several papers he found, some in one place and some in another.—Now as he found them, he asked Mr. Matthews, are these your papers, do you own them? Yes, says he, I do.

Att. Gen. Did you put a mark on the papers?—*Rob.* Yes.

Att. Gen. What is the mark?

Rob. 'The 7th July, 1719, taken out of Mr. Matthews's pocket.'

Att. Gen. Have you put your name to it?

Rob. Yes, this is my name.

Att. Gen. When did you put your mark?

Rob. The 7th July.

Att. Gen. What time of the day?

Rob. About twelve o'clock.

Att. Gen. How long after they were seized?

Rob. About two hours.

Att. Gen. Where had the papers been?

Rob. This paper in Hutchins's hand, and the rest in mine.

Att. Gen. Was Hutchins ever out of your company from the time of taking them till you marked?

Rob. He was so far out of my company, he was in one coach, and I was in another; we had three or four prisoners; one coach could not carry us all.

Att. Gen. Can you be positive that the paper you have in your hand, was taken out of the individual pocket of the prisoner?

Rob. Yes, that I can.

Att. Gen. Shew him the rest of the papers. Whose mark is that?

Rob. '7th July, taken out of Mr. Matthews's pocket.'

Att. Gen. Is that your hand-writing?

Rob. This is my hand-writing.

Att. Gen. Where did you put your hand-writing to it?—*Rob.* In Downing-street.

Att. Gen. When?

Rob. About two hours after we had seized them.

Att. Gen. In whose custody had they been?

Rob. In Mr. Hutchins's.

Att. Gen. Are you positive that was taken out of his pocket?—*Rob.* Yes, Sir, I am.

Att. Gen. Where was he when you took them out of his pocket?

Rob. He was in bed.

The first proof-sheet shewn to him.

Att. Gen. Look upon that, see what is written upon that.

Rob. 'Taken in Mr. Matthews's room the 7th July, T. R. and J. Hutchins.'

Att. Gen. Do you remember the taking of that?—*Rob.* Yes, I do.

Att. Gen. Do you remember in what room?

Rob. I cannot remember in what room, because there were several papers.

Att. Gen. In how many rooms did you find these papers?

Rob. Most of them in one room, some under the bed, in the bedchamber where he lodged.

Att. Gen. Was there papers in any other room?

Rob. I cannot well tell that, because I kept the door, but several papers were taken in the bedchamber.

Att. Gen. Are you certain that paper marked was taken in his bedchamber room?

Rob. That I am positive of.

The other papers shewn him.

Rob. 'Taken the 7th July in Mr. Matthews's room, T. R. and J. Hutchins.'

Att. Gen. Where did you put the mark, and when?

Rob. In Downing-street, at the same time.

Att. Gen. Can you be positive they were found in his room?—*Rob.* Yes, I can.

Mr. *Ketelbey.* When you say his room, do you mean his bedchamber?

Rob. His bedchamber.

Mr. *Bootle.* Look upon the rest. Read the marks writ upon them.

Harp. Yes, several.

Mr. *Ketelbey.* Who were they?

Harp. One Mr. Vezey, another Mr. Wiggens.

Mr. *Ketelbey.* Who were the composers?

Harp. There were several in the house.

Mr. *Ketelbey.* Who were they?

Harp. There was Mr. Wiggens, Mr. Staples, and several others.

Mr. *Ketelbey.* What is their work?

Harp. They composed and made ready for the press.

Mr. *Ketelbey.* That room that is adjoining to the prisoner's room, who lay in that room?

Harp. I lay in it.

Mr. *Ketelbey.* How many doors are there to the room?—*Harp.* But one.

Mr. *Ketelbey.* Doth it go through out of his room?—*Harp.* Yes.

Att. Gen. The room that adjoins to the room wherein the prisoner lay, had you any papers there?

Harp. I had one that was found in my pocket.

Att. Gen. Was that all?—*Harp.* Yes.

Att. Gen. Was there any the prisoner had there?—*Harp.* I cannot be positive.

Att. Gen. Had you any more than that one in your pocket that belonged to you?

Harp. No, Sir.

Lawrence Vezey sworn.

Att. Gen. Have you at any time belonged to Mrs. Matthews's printing-house?

Vezey. Yes, Sir.

Att. Gen. Where is it?

Vezey. In Little Britain, in Pelican-court.

Att. Gen. Do you remember whether, about June last, you was sent for, or called upon by the prisoner to come to work?

Vezey. No, I was not called for to come to work; but on Wednesday the 3rd of June last, I went to work, as usual, in the morning, between four and five o'clock. When I came into the court, the apprentice lies backward, I called out, William! The apprentice opened his window up two-pair-of-stairs; says he, 'Old gentleman, the door is open.' I went up into the press-room. Mr. John Matthews came up; says he, 'Old gentleman, I have a job for you to do.' Says I, Is the work in haste? 'Yes, it must be done soon.' Then came up William Harper; I asked him what it was. Says he, 'I don't know, he hath got a job to do.' About nine o'clock I went to market, when my companion went to breakfast; in the mean time, there was a form composed in quarto, called "Vox Populi Vox Dei," I cannot say who composed it; then John Matthews was gone out of the room. When I came back from market, and my companion had breakfasted, I went to work again, as usual; and Mr. John Matthews came up, and said, 'Damn it, I have transposed the pages;' I saw no proof sheet; but he takes out the form, and lays it on the press, and puts it into order.

Att. Gen. What do you call that, imposing it right?

Vezey. Yes, imposing it right.

Att. Gen. Did you see what it was?

Vezey. Yes, it was the quarto, 'Vox Populi,' I remember it very well, I laid it on, and he pulled it away himself.

Att. Gen. This was before the impression was wrought off?

Vezey. Yes, Sir, after it was right imposed, he pulled off a proof, and took it all away together.

Att. Gen. What did he pull away, a proof that was right imposed?—*Vezey.* Yes.

L. C. J. Was that of the libel?

Vezey. Yes, my lord, he had got it off the press, and corrected it.

Att. Gen. What, the form of the quarto, of 'Vox Populi'?

Vezey. Yes. So having made it ready a morning or two afterwards, Harper and I went to work, and worked off the impression, and the prisoner took it off.

Att. Gen. Do you remember how many were wrought off?

Vezey. A thousand, a ream.

Att. Gen. A thousand of what?

Vezey. A thousand of the first half-sheet, and of the second.

Att. Gen. Did he give you any money for this?

Vezey. After the job was done, I had fourteen shillings for William Harper's share and mine.

Att. Gen. The apprentice, had he any money?

Vezey. Yes, he had as much as I; I had let Harper have the money before, so I stopt it.

Att. Gen. Now shew him the libel;—what came of the libel after the impression was wrought off?

Vezey. He came up, and brought a great hair-bag, and carried them away.

Att. Gen. Shew him the proof-sheets; pray look upon them two, and tell us whether they are proof-sheets?

Vezey. Yes, they are marked as proof-sheets.

Att. Gen. Upon the marks and view of the paper, do you believe them proof-sheets?

Vezey. Yes, I do.

Att. Gen. Do you remember the letter?

Vezey. I remember such a sort of a letter, to the best of my knowledge; I believe we had no other thing done in the house of the same kind before, or since.

Att. Gen. Look on those two papers; is any thing wrong imposed?

Vezey. Yes, my lord, this is wrong imposed.

Att. Gen. Do you know the hand-writing of the prisoner?—*Vezey.* No.

Att. Gen. But you see him correct it?

Vezey. Yes.

Att. Gen. Do you remember, or can you by inspecting these papers, recollect any of the corrections he made?—*Vezey.* No, I cannot.

Att. Gen. Did you look on the paper that time it was worked off?

Vezey. Yes, I did, because the title stood next to me; I took notice of 'Vox Populi,' that is all; I never read the paper.

Att. Gen. Do you believe those to be proof-sheets of that libel?

Vezey. Yes, my lord, I believe them to be two proof-sheets.

Att. Gen. Do you believe that a paper wrought from the impression?

Vezey. Yes, my lord, I believe that to be one of them.

Att. Gen. Shew him another.

Vezey. Yes, I believe them to be some of the same papers to the best of my knowledge.

Mr. *Ketelbey.* You say you believe these papers shewn you, to be the papers wrought off from that impression?—*Vezey.* Yes, Sir.

Mr. *Ketelbey.* Have you any reason for your belief, only as you see the title?

Vezey. Yes, I have reason to believe it, because no quarto or any thing was done of the same form.

Mr. *Ketelbey.* Upon your oath, was that the title 'Vox Populi Vox Dei'?

Vezey. That was the only time I see it, it was Latin, I did not understand it.

Mr. *Ketelbey.* Did you look upon the whole title-page?

Vezey. I remember nothing but 'Vox Populi Vox Dei.'

Mr, *Ketelbey.* Was there any more beside?

Vezey. Yes, there was the head in Latin, and the flower over it.

Att. Gen. Do you believe that very paper to be one wrought off at that time?

Vezey. Yes, I do; and here is the Latin, I only read 'Vox Populi Vox Dei.'

Mr. *Reeves.* I think you say there is a flower, look upon that flower, and see whether it be a flower of the same kind?

Vezey. I believe it was like this flower.

Mr. *Ketelbey.* Now you have the paper in your hand, pray read the other line next to you if you can.

Vezey. 'From the solemnity of the———

Mr. *Ketelbey.* The line above it.

Vezey. 'Ex ore tuo te judico.'

Mr. *Hungerford.* Do you remember any part of the title of the book but 'Vox Populi Vox Dei.'—*Vezey.* No, my lord.

Mr. *Ketelbey.* Had you any discourse with Mr. George Matthews about this matter, your giving evidence on this occasion?

Vezey. No, my lord, I never see Mr. George Matthews since the prisoner hath been in custody; I was brought up lately from St. Albans.

Mr. *Hungerford.* Are you in custody now?

Vezey. Yes, my lord.

John Darby and *James Roberts*, sworn.

Att. Gen. My lord, these are master printers; and we call these gentlemen in confirmation of the evidence which hath been given; they will account for the proof-sheets, that unless it be upon proof-sheets no such marks appear.

John Darby.

[The Sheets shewn him.]

Att. Gen. Sir, you are a printer, and much versed in printing, do you know what these are?

Darby. What they are, as how?

Att. Gen. In the way of printing, are they proof-sheets?

Darby. This may be taken either as a proof-sheet, or a revised sheet; a proof-sheet is that which is first pulled after the form is composed, and which is read by a corrector; and what faults are made by the composer are marked on the side, and this appears to be of that nature.

Att. Gen. What is a revised sheet?

Darby. A revised sheet is after a proof is corrected, another sheet is pulled and compared with what we call the proof, to see whether the faults are corrected; if not, they are marked a second time.

Att. Gen. But it is either a proof-sheet or revised sheet?

Darby. Yes, it certainly is one or the other.

Att. Gen. Your reason?

Darby. Because there are several marks on the side.

Att. Gen. Is that according to the custom?

Darby. Yes.

Att. Gen. Look upon them, are they both right imposed; how are they in that respect? Look upon the first, are they both the same?

Darby. No, Sir, I think not; this former doth not seem to be rightly imposed; for here the first page is out of its proper place, that is for certain.

L. C. J. That is what you called wrong imposed?—*Darby.* Wrong imposed, my lord.

Att. Gen. Look on the other.

Darby. This seems to be right imposed.

Att. Gen. Are they imposed alike?

Darby. Certainly not.

Att. Gen. I ask you as to both these, I do not confine the question to one only, whether they are proof or revised sheets?

Darby. I take them to be one or the other, by their not appearing to me to be both proof-sheets; by the one being wholly imposed wrong, and the other afterwards transposed and made right.

Att. Gen. In the course of printing, whether is it not usual, where the impression is more than half a sheet, that there may be a superfluity of sheets of one more than the other?

Darby. It is very common, if a book consists of several sheets, it is almost impossible the number should be exactly even, sometimes it may happen.

Mr. *Reeves.* Look on the corrections made on those proof-sheets; give an account if they are made in the usual manner.

Darby. So far as I have observed, the corrections are the same, they are made in the common way of correcting.

Att. Gen. Sir, you are asked whether the corrections are in the usual manner of correcting proof-sheets?

Darby. They are, they are not all, a colon

is marked in one, and not in another, but a comma; that is not material, and where it is 'as' instead of 'in,' that is a plain mistake, but they are generally marked in both as they ought to be.

James Roberts, sworn.

Att. Gen. Mr. Roberts, are you a master-printer?—*Roberts.* Yes, Sir.

Att. Gen. Look upon these and tell us, in your judgment, in the way of printing, what these are; proof-sheets or revised sheets?

Roberts. They may be either proof-sheets or revised sheets: they are sheets corrected after the form is composed, but whether first or second, one or the other, I cannot say, because the faults are marked in the side; and that is always done, it is the usual way.

Att. Gen. Look upon the imposing of these two papers.

Roberts. This is wrong imposed, this side-page ought to be here.

Att. Gen. Look upon the other.

Roberts. This is right-imposed.

Att. Gen. You speak as to both of them, by the manner of their correction, both of them to be proof-sheets or revised sheets?

Roberts. Most certainly they are one or the other.

Att. Gen. I think now, my lord, we are entitled to read the libel; put in that that was found in his pocket, if you please.

Mr. Hungerford. My lord, the act of parliament is, "if any shall declare, affirm and maintain, by writing or printing," &c. that is the offence pretended to be made out by this indictment. Now I most humbly submit to your lordship, whether any part of this evidence comes up to make out this fact?

L. C. J. The question now is, whether the libel is to be read? Have you any objection to it?

Mr. Hungerford. Surely, my lord; unless it be a proof by way of evidence, that makes out this offence charged in the indictment, it is not proper.

Mr. Ketelbey. They may perhaps give evidence, what they call a co-operating evidence.

L. C. J. Read that found in his pocket.

Clerk. "Ex ore tuo te judico. Vox Populi Vox Dei. To all true lovers of liberty, Vox Populi Vox Dei. From the solemnity of the Chevalier's birth, the moral impossibility of putting an imposter on the nation after the manner pretended, and the disappointment in the attempt of proving him so, I think it is demonstration, if hereditary right be any recommendation, he hath that to plead in his favour; and all asserters of limited monarchy must allow, that ought to be preferred, if the person having it is endowed with other qualities fit to govern; and the great opinion all courts have of this unfortunate prince's virtues, shews he only wants to be known by us, to be admired; and we only want the enjoyment of him, to make us happy. I will conclude with these remarks: first, that every asserter of hereditary right must be a Jacobite: secondly, that every Whig who makes Vox Populi his rule of government, must be so; and, thirdly, every asserter of limited monarchy must be so: the Chevalier being endowed with all princely virtues, so that all rights concur in him."

Mr. *Hungerford.* Read on.

Clerk. "I hope some patriot will rouse up the people to shake off this arbitrary government, and animate them with the saying of the noble Roman, who defended the capitol,

'Livy: quousque tandem,'* &c.

How long will you be ignorant of your strength? Count your numbers: sure you ought to fight with more resolution for liberty than your oppressors do for dominion.—Count your numbers.†"

Att. Gen. My lord, I did not oppose the gentlemen reading this part of the libel, but since they have made it a part of the evidence, it is my duty to observe what the spirit of this patriot was; it is a direct alarm to the people to rouse up, and throw off this arbitrary government; the malice plainly appears in this latter part of the libel; "I hope some patriot will rouse up the people to shake off this arbitrary government, and animate them with the saying of the noble Roman, who defended the capitol, How long will you be ignorant of your strength? Count your numbers: sure you ought to fight with more resolution for liberty than your oppressors do for dominion——Count your numbers."——A more dangerous attempt to alarm and rouse up the people against the government, cannot well be.

Mr. *Hungerford.* Mr. Attorney is going on with a clause that is not in the indictment; he is well acquainted with the nature of proceedings, and that is not regular.

Att. Gen. I do not mention them as words set forth in the indictment; but sure I may make use of another part of the libel to explain this.

Mr. *Reeves.* We humbly apprehend, it is necessary for us to produce not only these papers taken in his pocket, but these proof-sheets taken at the same time.

Att. Gen. The other is the eight or ten superfluous sheets, part of the libel as proved by the first witness; there are eight or ten half-sheets which were found in his possession, I insist upon that as a circumstance, to shew that he is the printer of this libel.

Serj. *Cheshire.* Mr. Darby told your lordship how it could be accounted for.

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* Had the writer in his mind an indistinct remembrance of Cicero's abrupt interrogation?

† "Count your numbers!—Thank God, the number of Jacobites were at that time but small; but now, we have so glorious a king on the throne, (one of the most justly admired, and best beloved princes, that ever adorned one) whose chiefest happiness is to reign in the hearts of his people, there is scarce such a thing as a Jacobite to be found." *Former Edition.*

Att. Gen. I desire the jury may have a view of them.

(They were all accordingly given to the jury, and being taken back again,)

Att. Gen. The jury shall have them again by and bye.

Mr. *Delafay* sworn.

Att. Gen. Sir, pray look upon those papers.—Have you looked upon these printed papers?

Delafay. I have, Sir.

Att. Gen. Was you ever present, and where, when the prisoner was examined touching these papers? If you was, what passed?

Dela. He was examined before Mr. Buckley and me, at the secretary's office.

Att. Gen. Touching what?

Dela. Touching these papers.—The first question I asked him, whether he owned them?—He did own them; the examination was taken in writing, and signed by us both. I desire it may be read.

Att. Gen. Were the papers there, had he them before him at the time of that or any other examination?

Dela. They were before him on the table at that time.

Att. Gen. Had he the sight and perusal of them at that time?

Dela. He owned them to be taken from him.

Att. Gen. Did he say any thing relating to these papers, how he came by them; whether did he deny before you that they were printed by him?

Dela. I cannot justly remember, I desire the examination may be read.—I remember in general he was very shy of owning any thing; this paper contains what he said.

Att. Gen. That paper cannot be made use of.

Serj. *Cheshire.* Did you enquire concerning the author of these papers?

Dela. I cannot remember I did.

Att. Gen. Was you present at any examination at any other place?

Dela. He appeared afterwards before my lords justices, and was examined.—He was told, that he was charged, with two other persons then named, (I do not remember their names) with printing such a paper; he answered, So it seems.—He was asked, how came you to busy yourself concerning it? My lords, says he, it was necessity; his brother did not give him his allowance.—He was asked about the author.—That he refused to tell. Some time after that he writ a letter to me, desiring to be brought before the lords justices again, intimating some discoveries; then he told them a story that a gentleman from the secretary's office had told him, if he could procure himself to be brought before the lords justices, the secretaries would be kind to him.—By the whole of his discourse, it was taken for granted he printed it, but he would not discover the author.

Serj. *Cheshire.* Repeat then his words before my lords justices.

Dela. He said that his brother had promised to make him an allowance, and did not; necessity, want of money, made him do this.

Serj. *Cheshire.* I think you say he was charged with printing the libel? The answer he gave was, 'So it seems.' Upon this there was a farther question, How came you to do a thing of this nature? He did not directly say, I did not do it, but he excused himself upon not having received money from his friends, intimating that it was necessity put him upon it.

Att. Gen. Is that the letter you received from him?

Dela. Yes.—I will tell you how I came to know I received it from him. He did not disown it.

Att. Gen. Was it read to him as his letter?

Dela. Yes.

Att. Gen. Did he deny it?—*Dela.* No.

Att. Gen. Did you enter into any expostulation about it?

Dela. I told him, when you writ this letter you was of another mind. Truly, he said, he did not know the author, and he could not discover him.

Mr. *Bootle.* Did he describe any person that came to him?

Dela. He said, a person in a tye-wig came to him, he apprehended him to come from the secretary's office.

Att. Gen. A letter directed to an under-secretary of state relating to Mr. Matthews, desiring to be brought up before the lords justices; when there, he is asked about the letter; he says he did write it, hoping he should find favour from the secretaries.

L. C. J. Pray give an account when the letter was read to him, what answer he made. Did he acknowledge that to be his letter?

Dela. I cannot directly say he did; but I told him, When you writ that letter, you seemed to be of another mind. He was asked what was the occasion of his telling us of making discoveries; this is trifling with us; when you writ that letter, you seemed of another mind.

L. C. J. What did he say to that?

Dela. He said, I cannot discover the author.

Mr. *Hungerford.* Now, in your lordship's judgment, whether any thing mentioned proves that letter to be his?—Pray, Sir, repeat what you said.

Dela. When he was brought before the lords justices, on my receiving that letter, when he was brought in, he was told, he had written a letter to me.

Mr. *Hungerford.* What did he say to that?

Dela. He told them a person whom he apprehended came from the secretary's office, a gentleman in a tye-wig, had been with him, and told him, if he could procure himself to be brought to the lords justices, on his submission the secretaries would be kind to him.

Att. Gen. My lord, here is a letter sent in the name of this man, desiring to be brought up, and he is brought up; the letter is read to him, he is asked the occasion of his sending it,

and he gives an answer; tells you, that which he says was the occasion, a gentleman, that he apprehended came from the secretary's office, and told him, if he could procure himself to be brought up to the lords justices, the secretaries would be kind to him. These are his words; is it necessary a man in direct terms should confess, it is my hand-writing? But these are probable strong circumstances of his acknowledging it, I think.

Mr. *Buckley* sworn.

Att. Gen. Sir, was you present when this young man was examined? or had you any discourse about this libel?

Buckley. I desire to see the examination. I find on the 7th of July, the messenger that brought in the papers laid them down; says he, these were found in his pocket, and these in his room; he laid them down on Mr. Delafay's table; I asked him if the papers were taken in his possession? he said they were: he was also asked how he came by them.

Att. Gen. Did he say any thing in direct answer or excuse?

Buckley. No.—I told him, You are charged with being concerned in printing these papers, which is a great crime.—He made no answer, but took snuff.

Att. Gen. Do you know any thing more fell from the mouth of the prisoner touching these libels?—*Buckley.* No, my lord.

Mr. *Hungerford.* May it please your lordship, and you gentlemen of the jury, I am of counsel in this case with the prisoner at the bar, who (as the counsel for the king observe) is a boy, a youth, and an apprentice; I thank them for that observation; that is an age which is usually exempt from malice and design, and without proving both being in the prisoner at the bar, he must be acquitted of the offence in the indictment. Malice and design are commonly the temper of advanced years, and not of apprentice boys. The accusation against the prisoner is founded on an act of parliament, made in the 4th year of the late queen, and re-enacted on the Union in the 6th year of her reign; the crime made high treason by that act of parliament, so far as I remember, (for it being dark I cannot read) is, that if any person or persons shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm, that our sovereign lady the queen that now is, is not the lawful and rightful queen of these realms, or that the pretended prince of Wales, who now stiles himself king of Great Britain, hath any right or title to the crown of these realms; or that any other person or persons hath or have any right or title to the same, otherwise than according to an act of parliament of the first of king William and queen Mary, and an act of the twelfth of king William, every such person or persons shall be guilty of high treason.

This is the crime the act of parliament makes to be high treason; the evidence to support this indictment, and that lays this offence to the prisoner's charge, are six witnesses, two messengers, the apprentice, the journeyman, and two gentlemen of the secretary's office, Mr. Delafay, and Mr. Buckley.

I shall, my lord, on the behalf of the prisoner at the bar, humbly offer to your lordship, and the gentlemen of the jury, some general, and likewise some particular considerations, which I hope will plainly shew him, the prisoner, to be an innocent man, and that there is no just ground for the heavy charge he now lies under. In the general, my lord, as to the act of parliament upon which this indictment is founded, I humbly offer it to your lordship's consideration, whether it was calculated for such a case as the prisoner's is supposed to be.

The words of the act which describe the offence are—I just now repeated them; and the next paragraph in the act gives direction for proclaiming the next in succession of the House of Hanover, immediately upon the queen's death: and it makes it high treason in the privy counsellors and others who should neglect their duty in that matter; and we all know that the matter under the consideration of the parliament at that time was, that since upon the queen's death, the next successor was like to be beyond sea, to secure that the Protestant succession should take place (as now, God be praised, to all our comforts, it hath), for this reason it is, that upon the queen's death a regency is appointed, the proclaiming the Protestant succession secured by a law which makes it treason in all persons of all degrees who neglect doing it; for this reason likewise, I humbly presume it is, that denying the title of any of the successors in the Protestant line, is not made treason as denying the queen's is; for can any man think why otherwise denying his present majesty's title to the crown when he is in possession, should be a less offence than denying the queen's, when she was alive? The only reason which occurs to me for this difference is (I speak it with all submission), that the parliament did look upon it, that when the Protestant succession had taken place, that act had attained its end, and was in effect to determine; for surely as to the nature of the thing, he who oppugns his present most gracious majesty's title, is as great a criminal as he who should oppugn the queen's, or the title of former kings or queens of this realm, and yet such oppugning or denying the king's title to the crown is not (as I think it at least) made treason by this act. But supposing (though not admitting) that the act of parliament was intended to operate upon such a case as the prisoner's is supposed to be, yet the witnesses do not prove that the prisoner did maliciously, advisedly, and directly, by writing or printing, affirm or maintain, that our sovereign lady the queen is not the lawful and rightful queen of these realms, or that the pretended prince of Wales hath any right or title to the crown of these realms. And yet further, if it should be

supposed that the prisoner did affirm and maintain the words in the indictment, yet with humble submission the words do not amount to an affirmation that the Pretender hath any right or title to the crown of this realm, which is the offence he is charged with.—The criminal described by this act must maliciously, advisedly, and directly, maintain and affirm; what he doth must be malicious: surely his youth, and the inoffensiveness of his carriage, and course of his life hitherto, will make the imputation of malice groundless; besides, there is no malice proved. The word 'advisedly,' which must likewise be an ingredient in this offence, is mentioned in opposition to a rash and inconsiderate act; and in this case the proof is so far from charging the prisoner with having done it advisedly, that he doth not appear so much as to have read it. And it is not pretended that he was the author, contriver, or publisher of it. The word 'directly,' is likewise inserted in the act, in opposition to innuendoes or forced constructions. As to the evidence, the two first witnesses, they manifestly contradict one another. Each of them contend for the honour of picking the boy's pocket.—Hutchins swears he took the papers out of the prisoner's pocket; and Roberts, that he took them out of his pocket, and Hutchins only peeped in at the door. And as to the papers found in the room next to the bedchamber, it doth not appear who put them there; and since every probable thing is to be presumed in favour of a man's life, the messenger may be as well presumed to put them there as the prisoner. And it must be remarked too, that the papers sworn to be taken out of his pocket, are not taken upon the prisoner's person, but said to be found in his coat pocket lying in the room; and it is no necessary inference that the prisoner did put them there, some other person may have done that. As to what one of these two witnesses (the messengers) swears, about a discourse betwixt the prisoner and him in the coach, as he brought him to Newgate, relating, to the prisoner's getting to be acquitted, by bribing the jury; it is so improbable, that I can hardly think any one can believe it; that evidence seems rather to be calculated to inflame the present jury than to relate a truth; but the present jury are too wise to be imposed upon, especially in the case of a man's life; upon the whole, these two witnesses have contradicted each other upon their oaths, and little or no credit is to be given to them.

The next witnesses are Harper the apprentice, and Vezey the journeyman, and by the notes I have taken of their evidence, it doth not amount to make out a criminal charge upon the prisoner. The prisoner is not thereby made the author, contriver, printer, or publisher, of this libel. One of the witnesses indeed says, that he was called up to assist the prisoner to do a job, and that the prisoner did overlook some of the proof-sheets; but it doth not appear that he over-looked all the proof-sheets, or that the sheets he did look over, were those supposed to be criminal.

We are, my lord, in the case of a new law, upon which none hath been yet tried, I think none accused, till the unfortunate young man at the bar; and we hope we are entitled to a favourable construction of any inadvertent thing the prisoner may have done; surely to co-operate in some little part of printing a side or part of this libel, cannot be treason. Printing itself is but a mechanical art, and one may print a whole volume, and not know one jot of the contents, drift, or tendency of the book; and in the present case the prisoner is not the master printer; he is but an apprentice, and the trade is carried on by his mother, and elder brother. And I hope it will always, in an English judicature, be deemed a severe construction of a law, that a man should be judged guilty of a capital offence, for a fact in committing of which he did not know that he sinned or offended against his own life.—As to what the gentlemen, Mr. Delafay and Mr. Buckley, say, they say nothing which can affect the prisoner; they could not prove the letter for which they were called, though Mr. Attorney seemed to press them hard upon that head; what Mr. Delafay says makes for the prisoner. He says, the prisoner told him, that what he had done was done out of want and necessity; how then can it be said to be done maliciously, advisedly, and directly? Without which it cannot be the offence contended for. And now, my lord, having remarked upon the evidence, all that my memory or notes could enable me, I humbly crave leave to insist, that the words laid in the indictment do not amount to any affirming, or maintaining, that the Pretender hath any right or title to the crown of this realm. I neither have, nor ever had, this silly as well as wicked libel; and I have therefore taken the words as they are laid in the Indictment, omitting the innuendoes only, and I have compared them with the book, when read by the king's counsel, in the course of their evidence; and they are these: "From the solemnity of the Chevalier's birth, the moral impossibility of putting an impostor on the nation, after the manner pretended, and the disappointment in the attempt of proving him so; I think it is demonstration, if hereditary right be any recommendation, he hath that to plead in his favour." Is there in that paragraph any affirming, and maintaining, that the Pretender hath a right to the crown of these realms? The words are, "if hereditary right be any recommendation, he hath that to plead in his favour;" the sentence begins with an *if*, and is no affirmation at all, and but a loose way of talking, as we call it, with *ifs* and *ands*; it can never amount to an affirmation that the Pretender hath a right to the crown of these realms.—The libel goes on and says, "That all assertors of limited monarchy must allow that ought to be preferred, if the person having it is endowed with other qualities fit to govern; and the great opinion all courts have of this

unfortunate prince's virtues, shews he only wants to be known by us to be admired, and that we only want the enjoyment of him to make us happy." Surely, my lord, this part of the libel, though assisted with several unnatural innuendoes, neither affirms, nor maintains any thing at all.

The other words are these: "I will conclude with these remarks. First, That every assertor of hereditary right must be a Jacobite. Secondly, Every Whig, who makes Vox Populi his rule of government, must be so. Thirdly, Every assertor of limited monarchy must be so.—The Chevalier being endowed with all princely virtues, so that all rights concur in him." This, my lord, I think is the only paragraph in which the word 'right' is mentioned; and yet, with humble submission, it doth not amount to an affirming, that the Pretender hath a right to the crown of this realm. The author seems to please himself with mixing of companies, he puts Whig and Jacobite together, and so let them continue; for my part, I believe there will be no high-treason in that; surely the words "that all princely virtues concur in him," gives no colour for the inference: he may paint or describe him with the perfections of an angel, if he pleases; but if he doth not affirm, and maintain, that he hath a right to the crown of this realm, it is not treason. I say, affirm and maintain, for the words are in the conjunctive, so that a bare assertion, or affirmation, that the Pretender hath a right, is not sufficient, unless he support such assertion by reason or argument; and for my part, I think there is not one word of argument in the whole book.

Your lordship observes how many innuendoes this Indictment is supported with, and how foreign and unnatural some of them are, even the chief of them; Chevalier, innuendo the person lately called the prince of Wales, &c. is, with humble submission, in a case of life and death, not to be tolerated, because of the uncertainty, there being more knights than one, and more orders of knighthood than one in all kingdoms and countries. It is said by all the judges in Griffith's case, third Modern, fol. 202, that an indictment is the declaration of the king against the life of a subject, and ought therefore to set forth a sufficient certainty of the facts, which shall not be supplied by arguments or any intendment whatsoever. This, my lord, was the opinion of the judges; and I will be bold to say, let any one read over this Indictment without the innuendoes, and they can make nothing of it as to the present accusation. Upon the Revolution, the highest court of justice in the kingdom; the House of Peers, did brand this practice of innuendoes, which were but too familiar in the preceding reigns. It is in the case of sir Samuel Barnardiston, which being quoted in Dr. Sacheverell's trial, Mr. Attorney can be no stranger to it. Sir Samuel was accused for a paragraph of a letter that was intercepted at the post-house; the offence was described & ascertained by five or six innuendoes in the information, upon which sir Samuel was convicted and fined; and the record being removed by Writ of Error before the House of Lords, the Lords reversed the judgment; and the reason assigned for the reversal is, that innuendoes, or supposed and forced construction, ought not to be allowed, but that all accusations ought to be plain.

I must therefore humbly submit it to your lordship, whether this liberty of supporting accusations by innuendoes, ought to receive any countenance from a court of justice, or from a jury of substantial freeholders of the city of London; sure it is hard that any subject should be made guilty of a capital offence by a laboured or forced construction of doubtful words; we therefore, upon the whole, humbly hope that the prisoner will be acquitted.

Mr. *Ketelbey*. May it please your lordship, and you gentlemen of the jury, I am likewise assigned counsel for the prisoner at the bar; and indeed, my lord, I must own, that from the time I first saw this Indictment, I have been somewhat at a loss to know upon what statute it was grounded; what act of parliament had made the facts therein charged to be high treason. But since Mr. Attorney hath been pleased to insist upon the sixth of the queen, chapter the 7th, as the foundation of this Indictment, I shall beg leave to consider that statute, and submit it to your lordship's determination, supposing this fact as laid in the Indictment to be true, whether it amounts to high-treason within that statute or not.

My lord, I would observe that this statute is introductive of a new law, penal in the highest degree, making that high-treason which was never high-treason before, but was an offence of a lower species; and the prisoner is the first instance, the first precedent against whom this act has been endeavoured to be put in execution.

That clause of the act which makes it high-treason to deny the power and authority of the parliament to limit the succession of the crown, does not, as I take it, at all relate to the present question; and therefore, I shall only trouble your lordship with some observations upon the other three cases which the statute has made high-treason. To each of these the act hath annexed, that it must be by writing or printing directly; I beg leave to lay what weight I can upon this word 'directly:' the words of the act are, That if any person or persons shall maliciously, advisedly, and directly, by writing or printing, maintain and affirm, that our sovereign lady the queen, that now is, is not the lawful and rightful queen of these realms; or that the pretended prince of Wales, who now stiles himself king of Great Britain, or king of England, by the name of James the third, or king of Scotland, by the name of James the eighth, hath any right or title to

the crown of these realms; or that any other person or persons hath or have any right or title to the same, except the persons to whom it is limited by the several acts of parliament, every such person or persons shall be guilty of high-treason. The word 'directly' goes to all these three cases; there must be a direct affirmation of the truth of one of these three propositions, or else it cannot be high-treason within this statute. I desire to know if, in the libel that hath been read to you, there is any such expression as the crown of these realms, the Pretender, king James the third, the prince of Wales, or any other of the periphrases or descriptions mentioned in the statute; I admit there is something said in the libel about the Chevalier, but who this Chevalier is, or who is meant by that name, I will not take upon me to determine. But sure I am there is no such word in the statute; it is a general, a common appellation, a mere *individuum vagum*, and without some particular addition, some explanatory restriction, cannot properly be applicable to one man more than another; how then the prisoner came to be charged with affirming directly, that the Pretender had a right to the crown of these realms, when there is no such word in the whole book, when the statute expressly confines the offence to such particular propositions in the words there set down, without saying to that or the like effect, I cannot conceive.

The reason why we desired to have the whole book read, was to see whether there were any such words there; and we had no other way of being satisfied in that point, since Mr. Attorney, upon the application of our solicitor, was pleased to deny us an opportunity of seeing the libel; and by the tenor of the Indictment, the gentlemen who drew it, were conscious, or at least seemed to be, that there is no direct affirmation of this nature in the libel. If they were not of this opinion, why have they put in their innuendoes? If the sense had been plain, full and direct, what occasion was there for propping and supporting it with auxiliary clauses and explanations? They have inserted one innuendo: if hereditary right be any recommendation, he hath that, 'Jus hereditarium ad coronam hujus 'regni, innuendo;' and in another place, all rights concur in him, innuendo all rights to the crown of these realms; is there any thing of the crown of these realms preceding? All rights concur in him; rights to what? Is it directly affirmed, or doth it necessarily follow, it must be right to the crown of these realms? Are not these most strange and strained innuendoes? It may as well be understood to be a right to any part of Africa, or any thing else, as to the crown of these realms.

In my lord Coke's fourth Report, folio 17, *adversus* Rutleeh, it is resolved, That an innuendo cannot alter the matter or sense of the words themselves, nor extend the general words by an imagination of an intent, which is not apparent by the preceding words to which the innuendo refers, and in effect it stands in the place of a 'predict.' I shall mention but one other case, which several of your lordships well remember when it was in agitation, and some of the gentlemen of the other side were concerned as counsel in it. It was Michaelmas the 9th of king William, the king against Gripe (lord Raymond's Reports, vol. 1, p. 256), an information for perjury; and laid, that the defendant swore that Mr. Stroud was not at Newnham, innuendo Newnham in Devonshire. The Court, in giving judgment, laid it down as a rule, that no innuendo could supply the defect of a sufficient certainty; and that the only use of it was to denote some person or thing before-mentioned.

My lord, I could offer several other cases which explain the doctrine of innuendoes; and would shew the absurdity of the innuendoes in this Indictment; but I shall not trouble your lordship with them at present, relying upon the Cases already cited; and therefore we humbly insist upon it, that the prisoner is not guilty of directly affirming that the Pretender hath any right or title to the crown of these realms; neither is he, as we apprehend, within the reach of either of the other two clauses; the first relates only to the queen, her late glorious majesty, now dead; whether the whole act was temporary, and determined upon the demise of the late queen, and the establishing the succession in the House of Hanover, I shall not at present debate, submitting that point to your lordship's determination, upon the weight of what Mr. Hungerford hath offered on that head; but this I think I may humbly insist upon, that this first clause at least was temporary; and since the statute expresses it in words of the present tense, whoever shall affirm, that our sovereign lady the queen, that now is, is not the lawful and rightful queen of these realms, no person at this time, by the efficacy of this clause, can be guilty of high-treason.

As to the third clause, Whoever shall affirm, that any other person or persons hath or have any right or title to the crown of these realms, otherwise than according to an act of parliament made first Gulielmi et Mariæ, entitled, "An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown;" and one other act, made the twelfth Gulielmi Tertii, entitled, "An Act for the Limitation of the Crown, and better securing the Rights and Liberties of the Subject," and the several acts made for the Union of the two kingdoms, &c. surely it will not be contended, that the prisoner is guilty of the offence charged in this clause; for then this Indictment can never maintain the charge; proper clauses of those several statutes should, in such case, have been set forth in the Indictment, and proper averments to bring the prisoner's case within this clause.

I must admit, that if it was done advisedly and directly, the law will imply it to be maliciously; I shall therefore only beg leave to add one further observation upon one other single

word of this statute, and that is upon the word 'advisedly:' whoever shall advisedly maintain, affirm, &c. Advisedly here must necessarily import, not only a competent capacity, but the actual exercise of that power of thinking, and, in some degree, maturity of judgment and due premeditation; it stands in contradistinction to a rash, heedless, and inconsiderate act. Some of the gentlemen of the other side have been pleased, with a laudable and generous compassion, to take notice of the prisoner's youth; can a boy of seventeen be said advisedly to maintain an assertion contrary to one of the three recited clauses, when the matter is so far from being plain and clear to much older heads; and at the most is so dubious, that your lordship, in your great justice, hath permitted it to be debated for several hours, and perhaps the debate may hold some hours longer, Whether the paragraphs of the libel, set forth in the indictment, are a direct affirmation of what is made criminal by either of those clauses in the statute? I hope the gentlemen of the jury will likewise have a compassionate regard to the tender years and unadvisedness of the prisoner.

My lord, the next thing we are to submit to your lordship's consideration is, whether the evidence that hath been given be sufficient to convict the prisoner of the fact, supposing it to be high-treason. Upon a trial for high-treason, the greatest crime, the strength ought to be adequate, in some measure, to the nature of the offence; for a person that is indicted for high-treason to be found guilty upon dubious evidence, strained constructions, implications, or far-fetched innuendoes, never was yet thought just, nor will be by your lordship.

My lord Coke, in his third Institutes, fol. 12, hath laid down the rule of evidence, in cases of high-treason, where he comments upon the words of the statute of the 25th of Edward the 3rd, 'proveably,' that is, upon direct and manifest proof, not upon conjectural presumptions or inferences, or strains of wit, but upon good and sufficient proof; and several statutes have provided, that there shall be, at least, two credible witnesses to every species of treason, and each overt act laid in the Indictment.

Whether the evidence, that hath been offered in this case, comes up to my lord Coke's rule, or be sufficient to convict the prisoner of the crimes laid to his charge, I must submit to your lordship's judgment, when I have made some few general remarks, without repeating or going into the particulars thereof. They have examined the two messengers, the two servants in the house, two gentlemen belonging to the secretary's office, and some masterprinters.

What the printers have said, in relation to the method of printing, composing, correcting and imposing right or wrong, we have no reason to controvert, not apprehending that the prisoner is the least affected thereby.

As to those worthy gentlemen, Mr. Delafay and Mr. Buckley, they delivered their evidence with such a tender regard to truth, without stretching one tittle beyond what they certainly remembered to be exact matter of fact, that I should do an injury to myself as well as to them, if I suspected in the least of the reality of what they said; but the utmost that can be collected from their evidence, as I apprehend, amounts only to some youthful imprudences in the person's behaviour upon his examination, and not to any confession of the fact charged upon him in the indictment.

I appeal to your lordship's observation, whether John Hutchins and Thomas Roberts, the two messengers, did not directly contradict one another; and Hutchins, that was first examined, directly contradict himself? Hutchins swore he found two of the libels, now produced, in the prisoner's pocket, and some more in his bed-chamber; but upon his being cross-examined, he acknowledged that Roberts went first into his room, and took them out of the prisoner's pocket; and when he asked him strictly to the room where the other libels were taken, he could not be sure whether it was in the prisoner's room, or in the inner room, where the apprentice lay. Hutchins swore, they were never out of each other's company, till they came to the secretary's office; and Roberts owned that he and Hutchins went in two different coaches from the prisoner's house.

William Harper the apprentice, and Lawrence Vezey the journeyman, were next examined, and said indeed the prisoner corrected one of the sheets that was wrong imposed; and Vezey said, he took off the proof-sheet; but is this printing? Is correcting, or right imposing a proof sheet, the overt act that is made high-treason, by this statute? Mr. Attorney is pleased to call it, co-operating; but, my lord, there are several preparatory acts in this art, the distinct offices and employments of different persons, before it can be properly called printing, and in the course of our evidence, we shall endeavour to explain its previous parts and gradations; and if it had been unquestionably proved that the prisoner had a hand in preparing sheets for the press, yet we hope your lordship will not construe that to be co-operating, much less printing; the most that can be made of it is, that he caused it to be printed; but causing or procuring such a libel to be printed is not, as we apprehend, the offence laid in the indictment; it must be nothing less than actual printing. In other indictments for publishing libels, you say, 'publicavit et 'publicari causavit,' and thereby you are let in to give evidence of either. But in a penal law, and especially in cases of high treason, your lordship will in the strictest manner construe that only to be the offence, which the express words of the act of parliament have made so, and not extend or give any equitable latitude to it. However, if your lordship should be of opinion, that this part of the king's evidence any ways affects the prisoner upon this Indictment, we shall, according to our instructions, be able to produce a great number of witnesses

to contradict what these witnesses have sworn, and to give such an account of Vezey, that if we had no other answer to his evidence, his own character would cut him down, and utterly deprive him of any credit with your lordship and the Jury.

We will call our witnesses, and hope the prisoner's case will appear to be such, that we shall have your lordship's directions for his acquittance.

Walter Hutchinson, and *George Matthews*, sworn.

Mr. *Hungerford*. Mr. Matthews, pray give my lord and the jury an account what you heard Mr. Harper and Mr. Vezey declare concerning this accusation.

Matthews. All I can give an account of is this. About the 5th or 6th of June, the 6th particularly, it being my own birth day, I came to my mother's house about eleven o'clock in the morning, the time I generally do, because I do not live in the house; a person met me coming along in the Blue Coat hospital, and told me there was something printing in our house, in my mother's house, and desired I would search the house; upon this I was very uneasy, and directly went home and made all the search I could; the persons they gave me information of were Vezey and Harper, the apprentice and journeyman.

L. C. J. Who gave you this information?

Matthews. A young woman that met me.

L. C. J. What was her name?

Matthews. It was my own sister; she told she was afraid there was something doing in our house, because they were up earlier than usual. I made a strict enquiry, and could find nothing at all that was doing. Upon this, having a great suspicion, I took Vezey into my closet, and asked him, Have you printed any thing? Nothing, he told me, of any particular title had been printed, but something had been printed; and being done at an unseasonable time, gave me a suspicion it was contrary to my orders and directions. Mr. Vezey, says I, hath there been any thing printed in this house concerning or against the government? No, there hath not. You know, says I, Mr. Vezey, that as my brother happened to be under misfortunes before, and through the favour of the government shewn to him he was discharged; therefore when he came into the house again, I publicly gave orders, that if ever they found he did, or talked any thing against the government, they would come and give me information, that I might take a proper method to prevent it. Upon this Vezey owned I had given that public notice; but also, when my brother came home——

Mr. *Ketelbey*. I believe, Mr. Matthews, you are going foreign to the matter; I would have you go on with the thing in question, and come to the matter in hand.

Matthews. Upon that, my lord, I ordered a lock to be put upon the press-room door.

Mr. *Ketelbey*. When was this done? now?

Matthews. No—a twelvemonth ago—I ordered a lock, the key of which lock was always in the custody of the pressman, never any thing was done then. But now to speak to the matter I am to speak of—After this information, I took Vezey into the closet, and taxed him with it; he there told me, and made a great many imprecations, that he knew nothing of any thing done directly or indirectly, in my mother's printing-house, against the government; and then Harper I interrogated, and he did publicly in the printing-house, first in the closet, then publicly in the whole house, declare the same. I asked them publicly, severally and both together, whether they knew any thing printed in the house directly or indirectly, against the government, or no? They declared, they knew nothing directly or indirectly printed against the government.

Mr. *Ketelbey*. How old is your brother?

Matthews. I cannot exactly tell. I was 24 years of age last June, and my brother, I take it, is six years younger than I.

Mr. *Ketelbey*. Is he an apprentice still?

Matthews. My brother is an apprentice still; he was bound in September, 1715. He hath three years yet to serve.

Mr. *Ketelbey*. Who is the owner of the printing-press?

Matthews. My mother; but I have the direction of it, and some small concern in it.

Mr. *Ketelbey*. What servants are employed under you? Put them in order and degree, as I take it they are in the same nature as in other businesses.

Matthews. There is the master or mistress, and a journeyman, the eldest is generally looked upon to be the head in that way of business.

Mr. *Ketelbey*. What office hath he?

Matthews. That is as it happens. The composers; the pressmen, they are ignorant, silly fellows, only made use of to take off the sheets. These are the horses, as they call them.

Mr. *Ketelbey*. The composers, who are those?

Matthews. They are men generally better learnt.

Mr. *Ketelbey*. Who was the head composer in your house?

Matthews. Mr. Thomas Wiggens.

Mr. *Ketelbey*. Who were the other?

Matthews. Mr. Thomas Wiggens, Mr. Robert Staples, and John Smith.

Mr. *Ketelbey*. What share had your brother in the house?

Matthews. My brother had no manner of share or right in the printing-house.

Mr. *Ketelbey*. I think there is another busy officer, what is he?

Matthews. They generally have boys, and sometimes men to be runners, and messengers to the press. The devil is generally the boy, and sometimes they dirty his face, and by a metaphorical way of speaking, they call him the devil.

Mr. *Ketelby.* I pray, what character, generally speaking, is Harper of?

Matthews. I desire to be excused.

Att. Gen. Shew Mr. George Matthews that paper. Look upon the name subscribed. Do you see it?—*Matthews.* I do.

Att. Gen. Whose hand-writing is that?

Matthews. To give a direct and positive answer to that is very difficult, you yourself must judge.

Att. Gen. Give me an answer. I ask you, whether you know who writ that name, John Matthews?

Matthews. No, I cannot take upon me to swear that, because I did not see John Matthews write it.

Att. Gen. You are acquainted with your brother's hand-writing?

Matthews. I cannot say I am.

Att. Gen. Consider, can you say you are acquainted with your brother's hand-writing, or you are not? Do you believe it to be his hand-writing?

Matthews. I cannot directly say as to believing it, but I am not able to swear it.

Att. Gen. Have you never seen him write?

Matthews. I cannot say but I have.

Att. Gen. You have frequently seen him write. I ask you (mine is a direct question,) do you, or do you not, believe the name John Matthews, to be your brother's hand-writing, upon the oath you have taken?

Matthews. Really I declare upon the oath I have taken—according to the best of my knowledge, I positively declare, I cannot take upon me directly to swear it is his hand.

Att. Gen. I ask you, upon your oath, do you, or do you not, believe it to be his hand-writing?

Matthews. I answered you the question before, very plain.

Att. Gen. That is no answer to my question, whether you believe it, or not believe it?

Matthews. Really, I cannot be positive.

Att. Gen. Why do you trifle with the Court? Cannot you say, whether you believe it, or not believe it?

Matthews. I say, if you please to give me leave to introduce what I have to say, I believe it is something like it.

Att. Gen. You are to give an answer, as well for the king as your brother: do you believe that to be his hand-writing? or do you not believe it to be your brother's hand-writing?

L. C. J. Come, you must give an answer, whether you do, or do not believe it.

Matthews. At the time of this paper being writ I did believe it; I cannot say but I do believe it now.

Att. Gen. I think you say, when this paper was first writ, you believed it was; and you now believe it to be your brother's hand-writing. When I asked you whether you believed it or not, your answer was, you believe it is something like it. I ask you, do you now believe it to be your brother's hand-writing or not, upon your oath?

Matthews. I do not know what answer to make.

Att. Gen. Cannot you say Ay, or No?

L. C. J. Let the consequence be what it will, you must give a direct answer to the question; the question is not, whether it is your brother's hand-writing; but whether you believe it to be his hand-writing?

Matthews. I have some reason to believe it.

Att. Gen. Do not let me mistake you, I think you say you do believe it? Do you believe it is not your brother's hand-writing?

Matthews. Give me leave, let me state the question; what you ask me is, whether I believe it is my brother's hand-writing? I do believe it.

Att. Gen. Then I ask you now as to the substance and body of the paper. Do you believe that to be your brother's hand-writing, or not?

Matthews. No, it is not, it is my hand-writing.

Att. Gen. You believe the name to be your brother's, and the substance is yours?

Matthews. Yes.

Att. Gen. Was you present when the name John Matthews was subscribed?

Matthews. No, I was not.

Att. Gen. I ask you, whether you did not carry this letter to Mr. Secretary Craggs?

Matthews. Yes, I did.

Att. Gen. Did you not declare you brought it from your brother?—*Matthews.* Yes, I did.

Att. Gen. Did you not then say, it was subscribed by your brother?

Matthews. No, I did not.

Att. Gen. Then who sent you with this paper, to Mr. Secretary Craggs?

Matthews. I might say I came from my brother. I went first of all to the Secretary's office, it was, I think, on a Thursday, or a Tuesday, and the regency was broke up; and upon this I asked, Where Mr. Secretary Craggs was? Somebody said he was gone to dine at my lord St. John's, at Battersea. I went there, and desired to speak with Mr. Craggs. He sent out word, he would wait on me when he had dined; and he came out to me in the garden. I told him, Sir, I have gotten a paper from my brother.

Att. Gen. Did you not bring this paper from your brother?

Matthews. How bring it from him?

Att. Gen. Did your brother ever see it or read it?

Matthews. I cannot say my brother read it, because I never saw him read it. Give me leave, my brother was in Newgate, and locked up there; to say I see him read or sign the paper, I cannot.

Att. Gen. Did you not receive it from your brother?

Matthews. I received it from him as I took it; there was a paper brought to me, something of this kind contained in it.

Att. Gen. What paper are you speaking of? I ask you as to that paper; did you re-

ceive that paper from your brother, or did you not?

Matthews. I tell you, Sir, it was put through the grate at Newgate.

Att. Gen. By whom?

Matthews. By my brother.

Att. Gen. Into whose hands?

Matthews. It was put into my hands.

Att. Gen. That very paper in your hand was put into your hands through the grate, by your brother?

Matthews. I believe it was so. I will tell you, if necessary I should, any thing of that kind.—When we had read the paper——

Mr. *Hungerford.* Prove it—you have not proved it.

Serj. *Cheshire.* Mr. Matthews, I ask you if you have ever had any talk with your brother about the matters he was charged with?

Matthews. What, about this libel? I remember I have had some discourse with him about it.

Serj. *Cheshire.* By the oath you have taken, did he never own to you he assisted in printing of it?

Matthews. I never troubled myself one way nor the other.

Att. Gen. Let me not mistake one passage. At the time your brother delivered this paper to you out of the grate at Newgate, did he not desire you to carry it to the secretary of state?

Matthews. If you would give me leave——

Att. Gen. What did he say to you at that time?

Matthews. I cannot remember any particular words.

Mr. *Hungerford.* I did not observe that he said the letter was put through the grate by his brother into his hand.—Do you say your brother gave it to you through the grate?

Matthews. If I might have the liberty of telling the connexion of circumstances——

Att. Gen. I have not done with him, you break in upon us; I think you own the body, the substance of this paper, is your hand writing?—*Matthews.* Yes, Sir.

Att. Gen. How long was it after you writ the substance of this paper, before the time your brother put it into your hands out of Newgate?

Matthews. I writ it in my mother's house; from thence I went to Newgate; I asked for my brother, he was locked up, and there was the man called Mr. Matthews, and he came down; it was very dark, I could not see my hand. I put the paper through, and he gave it me again, I believe in seven or eight minutes time.

L. C. J. Did you give it him?

Matthews. I put it through the grate.

Att. Gen. Did you put it down in writing of your own head? or by whose instructions?

Matthews. The paper was brought to me by a messenger; the words to this effect, that I will recollect, if I can. "The copy of the paper entitled so and so, Ex ore tuo te judico, Vox Populi Vox Dei, &c. The papers entituled by that title were given to me by one John Broderick; one of them he gave me in Cock-pit-alley, Drury-lane; and the other he gave me at the Black-boy, somewhere by Drury-lane." Now in my account as it seemed a very confused paper, I drew it in a hurry, with a little sort of address, that I thought civil and handsome. Please to let me see the paper.

Att. Gen. Ay, see the paper. You say a paper was brought to you, wherein John Broderick is mentioned to you as the author of this libel; that the papers were given your brother by one John Broderick.

Matthews. This message was brought to me in writing.

Att. Gen. By whom?

Matthews. By one Mr. Plunkett.

Att. Gen. Whether did you form this paper upon that?

Matthews. I tell you, I did form it so far as this; something I made an addition to it.—It was the current opinion my brother was the printer of it.

Mr. *Bootle.* I would ask you this, you say you had intimation that the copy from which this libel was printed, was delivered by one Broderick; to whom was it delivered?

Matthews. I took it to be delivered to my brother.

Att. Gen. My lord, I am in your lordship's direction, whether it is not a proper time to desire this paper to be read; with great submission, this arises upon the evidence of Mr. George Matthews; he pretends to have added something by way of explanation.—I desire this paper, which he hath sufficiently proved to be his brother's paper, and subscribed by him, may be read.

L. C. J. You do not oppose the reading of it?

Mr. *Hungerford.* Yes, my lord, we do: if this paper is read at all, it must be read to make out the Indictment: it is a paper, as by what appears, is neither writ nor subscribed by him. —The gentleman says he guesses at it, and he says he doth not know that his brother ever subscribed or underwrit such a paper: so that it stands as a mere cypher, and is no manner of evidence, therefore we hope it shall not be read.

Mr. *Ketelbey.* My lord, we humbly conceive, there is not sufficient evidence for the reading of this paper. As to the body, he writ it; as to the subscribing of it, he is not well acquainted with his brother's hand-writing, and cannot say he writ it. Then, my lord, as to the business, of having the paper from his hands; he brought it to Newgate, he cannot be positive he delivered it into his brother's hands, or that he had it from his brother. Therefore we must submit it to your lordship, whether they have produced any evidence sufficient to entitle them to read this paper.

Att. Gen. Notwithstanding this objection, I humbly insist, that we are certainly entitled to the reading of this paper, on the evidence given by this Mr. George Matthews. I beg leave to open the paper. The paper amounts to a confession of the prisoner.

Mr. *Hungerford*, and Mr. *Ketelbey*. We pray, we may have your lordship's judgment.

L. C. J. The question now is, whether this paper must be read?

Att. Gen. My lord, let the contents of this paper be what it will, and a paper proved in the manner as this is, we are to be sure entitled to read it; what hath been sworn, I dare say they cannot, as I humbly apprehend, controvert: here is one brother swears to the hand-writing of another: that speaks itself. Nobody can doubt who he swears it to, who believes it to be his hand-writing; this alone entitles us to the reading of this paper, the evidence of so near a relation, who is, and must be acquainted with his hand-writing, who swears positively to it. In all the course of experience I have seen, there cannot be a fuller evidence to entitle us to read this paper, than hath been given; there are other circumstances carry it so far, no doubt can remain with your lordship. This paper is not only subscribed by John Matthews, but dictated by John Matthews; how much less doth what he swears amount to? He says, he received a paper from one Mr. Plunkett, who came from his brother; he formed this paper by that, something he added; afterwards he delivered the paper so formed into the hands of his brother; the brother had it in his custody, after it was so delivered, six or eight minutes, and it cannot be supposed but he should read it in that time, and afterwards delivered it to him again with his own hand, with directions to carry it to the secretary of state; this makes it as much his paper as if he had written the whole paper himself; the whole paper had his approbation, and it was made with a design to carry it to the secretary of state; with these circumstances, which are the truth of the fact, I insist upon it, with great submission to the judgment of the Court, that we are entitled to read it.

L. C. J. I take it, it is a common case. Suppose a trial between party and party, the common method of proving a man's hand is, a person is called who hath seen the party write. He is asked, whether do you believe it to be his hand-writing, or no? Nothing more is expected, than that he hath seen him write, and believes it to be his hand-writing. Mr. Matthews swears he hath seen him write, and he believes it to be his hand-writing. He goes on further and swears, he received a message brought to him by Plunkett; upon which he went to Newgate, his brother was called down to him, he delivered him the paper, and in six or eight minutes he came to him again, and delivered it him with his own name to it, which he believes to be his hand-writing.

Judge *Tracey*. We must have never an end of things, at this rate.

L. C. J. I think the paper ought to be read; if my brothers are of another opinion, they will tell you so.

Then the paper was read.

Cl. of Arr. Signed John Matthews—"I John Matthews, now in the master's-side of Newgate, being heartily sorry for the crimes I have been guilty of against his most sacred majesty king George, and his administration; and from a thorough conviction of my errors, an unfeigned contrition for them, and out of a desire to serve his majesty, do hereby make the following Declaration and Confession, (viz.) That the papers, (entitled, "Ex ore tuo te judico, Vox Populi Vox Dei; to all true Lovers of Liberty, Vox Populi Vox Dei") were both given to me, by one John Broderick, as also the money for printing them.

"And further I do declare, that the said John Broderick took the foul proofs of the papers aforesaid from me, in order to correct them; and when they were printed, fetched them away.

"And further I do declare, that the place where the aforesaid John Broderick gave the copy of the paper, entitled, "To all true Lovers of Liberty," &c. was in Cock-pit-alley; and he the aforesaid John Broderick gave me the copy of the other, entitled, "Ex ore tuo te judico, Vox Populi Vox Dei," &c. at the Black-boy, in Stanhope-street, both near Drury-lane; the place of his abode, to the best of my knowledge, is in Shire-lane.

"Of all and every the premises herein contained, I am ready to make oath, when called thereto by the government. I had three guineas June the 6th, and seven more the 19th, of the aforesaid Broderick."

Prisoner. I ask my brother whether he can distinguish my hand from another?

L. C. J. He hath sworn already that he believes it to be your hand.

Mr. *Hungerford.* I am not displeased that this paper comes to light. Here is a witness bound to do service to a brother in prison. Moved with compassion, he forms a paper of this nature, not by any instructions from the prisoner at the bar.

Att. Gen. My lord, I hope they are not at liberty to go on in this manner.

Mr. *Hungerford.* The instruction is handed from Plunkett, not immediately from his brother. There is nothing in this matter brings an offence home against the prisoner at the bar, within the statute.—Please to call Walter Hutchinson, and Thomas Tovie.

Thomas Tovie sworn.

Mr. *Hungerford.* Mr. Tovie, what account do you give of Mr. Vezey? How long have you known him?

Tovie. About a year and a half.

Mr. *Hungerford.* What character can you give of him?

Tovie. I can give him no character at all, good or bad.

Mr. *Hungerford.* Hath he the character of an honest man?

Tovie. No.—Not about his printing.

L. C. J. What reputation and character hath he among his neighbours?

Tovie. I know none of his neighbours, I am

little acquainted with any but he himself, and I have not known him above a year and a half.

Mr. *Mott*, and *William Boden*, sworn.

Mr. *Ketelbey*. Mr. Mott, how long have you known Vezey?

Mott. I was never in his company but once.

Mr. *Ketelbey*. What do you know about his character? his general character?

Mott. I know nothing of his general character.

Mr. *Ketelbey*. Boden, do you know Vezey?

Boden. Yes.

Mr. *Ketelbey*. What have you heard him declare?

Boden. I came here last Monday was se'nnight to hear this trial; he was got here, and he told me he was an evidence in this cause, and that after the publishing of the book, he bethought himself that he should get into some danger; so he went to the mother of this Matthews, and told her, if she would give him money, he would keep out of the way; accordingly he went to St. Albans, and staid there nine days; but no money coming, he could not stay out of the way, but must come to his business.

Mr. *Ketelbey*. I do not know why we should trouble your lordship with any more witnesses; I shall therefore only beg leave to observe from the purport of that paper, which hath now been read, whether there is any thing contained therein, that could prove the confession of this fact, that is now criminally objected to him?—There are some particulars; he confesses in this paper, he received a copy, and delivered copies back; but what we insist on in behalf of the prisoner is, that nothing in this paper amounts to charge him with high-treason, nor can properly be made use of against him on this Indictment.

Mr. *Hungerford*. The offence he is charged with is, that he maliciously, advisedly, and directly, did maintain and affirm, that the Pretender had a right to the crown of these realms. Now, my lord, with humble submission, this paper, be it what it will, take it in the utmost latitude, cannot be construed to come up to this Indictment. As it stood before we called our witness, it could not be read; but we are so unfortunate, by plowing with our heifer, they have got it to be read; but then there is no confession of a treason, or that he printed this libel; there is a story told that he received it of somebody, but there is nothing at all of the confession of the offence, and therefore we stand, with respect to the prisoner at the bar, in the same circumstances we were in antecedent to the reading of that paper; and as to the libel, it doth not contain such a treason as the act of parliament requires, and they have laid in the Indictment.

Att. Gen. My lord, before I reply, I desire to call a witness or two to support the credit of the evidence we have given.

Robert Bentley sworn.

Att. Gen. Mr. Bentley, do you know Lawrence Vezey?

Bentley. Yes, Sir, I have known him some time.

Att. Gen. How long?

Bentley. About six or seven years, I do not see him perhaps once in a twelve-month.

Att. Gen. Are you acquainted with his character?

Bentley. I do not know but he works honestly for his living.

Robert Procter sworn.

Att. Gen. Do you know Mr. Vezey?

Procter. Yes, Sir.

Att. Gen. How long have you known him?

Procter. Four or five years.

Att. Gen. What is his character?

Procter. I never heard any thing ill of him.

Att. Gen. Hath he the character of an honest man?

Procter. I never heard nothing but that he is an honest man.

Att. Gen. My lord, I will not trouble your lordship to call any more witnesses to support the credit of Vezey; it would have been necessary if they had affected him, but I think the little imputation thrown upon him is sufficiently answered.

My lord, I am sure I ought to have a principal regard to your lordship, considering how much time hath been already spent, and some consideration to myself, therefore shall trouble your lordship as little as may be by way of reply.

My lord, as to the evidence that hath been offered on the behalf of the crown: My lord, I must say, that even no occasion hath been given, in my opinion, by any observation I have heard made by the counsel for the prisoner, to make any answer by way of reply, had nothing been misrecited. But I shall leave that to your lordship's stating to the jury, which I am sure your lordship will do with the utmost justice, and more I neither ask nor desire.

As to this supplemental evidence I have offered, I must beg leave to answer, that they would have it that nothing collected from this paper in particular amounts to the offence, much less confirms what I have offered to prove, that he was the printer of this libel.

I think it impossible for any that hath heard and considers this evidence, to understand this paper any otherwise than a confession by the defendant, that he printed this libel; that is the fact to be tried; what else is the amount of those words? "I John Matthews, out of a desire to serve his majesty, do hereby make the following declaration and confession, that the papers, intituled, 'Ex ore tuo te judico, Vox Populi Vox Dei,' were both given to me by one John Broderick, as also the money for printing them;" certainly this is a confession that they were delivered to him; the papers from whence the impression was taken, that is the manu-

script, that is delivered to him by John Broderick, in order to have it printed, and at the time he gave him money for the printing them; doth not this necessarily imply, that he received the papers and the money, either to print it himself, or procure them to be printed? Is not this a necessary implication without any forced construction? And in the conclusion he says, "I had three guineas given me the day the impression was wrought off, seven more the 19th, of the aforesaid Broderick." The very day it was wrought off, the very day that he paid 14*s.* to the men that assisted him, he confesses that he had three guineas from John Broderick.

My lord, if this doth not amount to a confession that he received a paper in order to have it printed, that he did actually print this paper, it must amount to that or to nothing. But take it in conjunction with the rest of the evidence given, when he shall confess that he received the papers so intituled from Broderick, with the money for printing them; when it is proved, that this very libel is so entitled, as described in this paper; that he directed the printing that libel with the same title; that he paid for printing it the very same day, he says in his confession, he received three guineas from John Broderick. Whatever import this may have, taken separately, in concurrence with what hath been offered in evidence, it must amount to an absolute and direct confession, that he was the printer of this libel in judgment before your lordship. I shall say no more in answer to this paper.

The evidence of George Matthews is so far from being doubtful, that it is confirmed by the evidence given by the witnesses for the crown. Mr. Matthews had heard, by his sister, that something was done that very day against the government; he went directly to the printing-house, called for Vezey and Harper, examines them first in his closet, then afterwards makes a declaration in public, intimating (as it comes out) this very man had received information, that something of that nature was doing.

What is to be inferred from the rest of his evidence, because Vezey and Harper did not think fit to own they were concerned in printing it, therefore it is to be inferred the fact is not so? So far from any such conclusion, Vezey doth not pretend to know any more of the paper than part of the title, therefore he might justly answer the question; when the man tells you, upon his oath, he read nothing but part of the title, therefore so much of the evidence given by him, goes in confirmation of what Vezey swears; nothing he hath sworn throws any imputation, nor carries any inconsistency with what Vezey says.

I shall trouble your lordship no further as to the evidence.

There are some things of which I am obliged to take notice: My lord, I think both the gentlemen of the other side insinuate as if this was a temporary act. Mr. Hungerford would not say, that the law, on which this prosecution is founded, is a temporary law; but the insinuation came from him, and is followed by Mr. Ketelbey, as if that branch of the statute, on which this prosecution is founded, had not, at this time, an existence. Mr. Hungerford says, it was calculated not to be determined with the demise of the queen, but if it operated so far as to bring the king to the throne, it had its effect. My lord, there is not the least colour or foundation arising from the words or nature of the act of parliament for such an objection.

There are four distinct provisions: The first is the person of the queen; that if any person or persons shall, maliciously, advisedly, and directly maintain and affirm, that our sovereign lady the queen, that now is, is not the lawful or rightful queen of these realms, &c. The whole tenour following relates to the title on which the settlement of the crown is founded; and it is penned not in words personally, but in words that carry a perpetuity. That branch on which the prosecution is founded, is in these words: "Or that the pretended prince of Wales, who now stiles himself king of Great Britain, or king of England, by the name of James the 3rd, or king of Scotland, by the name of James the 8th, hath any right or title to the crown of these realms." This the law hath provided against, and made it high-treason, and it is fit it should be so. The next provision was for securing the succession: "Or that any other person or persons hath or have any right or title to the same, otherwise than according to an act of parliament made in England, in the first year of the reign of their late majesties king William and queen Mary, of ever blessed and glorious memory, intituled, "An Act declaring the Rights and Liberties of the Subject, and settling the Succession of the Crown;" and one other act made in the 12th year of his said late majesty, king William the 3rd, intituled, "An Act for the further Limitation of the Crown, and better securing the Rights and Liberties of the Subject;" and the acts lately made in England and Scotland mutually for the Union of the two kingdoms." It is plain by the connection "or that any other person or persons, &c." which shews that the provision here was intended to go along with the settlement, much less to determine with the happy accession of his majesty to the crown, that minute of time which placed his majesty on the throne. So the fourth part: "Or whosoever shall deny the right or power of parliament, to make laws and statutes of sufficient force and validity to limit and bind the crown, and the descent, limitation, inheritance, and government thereof." This is one foundation of his majesty's title to the crown; this is a principle will remain as long as the government itself.

My lord, I would not have said so much, if it had not been from the nature of the objection. This is a law, say they, that hath not been put in execution since it was made; in the course of fourteen years time, there hath

been nobody found guilty on it, not one prosecution. There is no instance of any law necessary to be enforced but as far as justice will admit, no such insinuation as this should pass in the world, for the encouragement of people to offend; but it must do it in an effectual manner, if they are persuaded that the law is not in being. My lord, a great deal hath been said on the learning and doctrine of innuendoes; there hath not been a solemn case of the learning of innuendoes as was thought material, but hath been quoted, as though some occasion was given for it by this prosecution. The gentlemen have thought themselves entitled to draw in all that hath been said on this head, though there is not the least foundation, on this prosecution, to take any notice of any thing that hath, in former times, been condemned on the account of innuendoes; the office of an innuendo is no more than to explain, no more than a 'predict;' but if in an express averment in the body of the indictment, the innuendo is put there to explain that averment; in such a case, there never was a time or instance that any hardship was imputed to make an innuendo, nor any ill consequence; now, my lord, there are two averments, that he the prisoner by printing the libel in the indictment *de et concernen'* the person described by the statute to be the prince of Wales, and of and concerning the crown of these realms; the innuendoes following relate to these two facts expressly averred: Will these gentlemen say, this is making a wrong use of an innuendo? No, it is not; this use of innuendoes hath been justified by the same authority that condemns them.

It lies upon this, and what the jury are to try, is, whether upon the evidence, they are not necessary and fully proved by the libel itself. As to the first, who is this Chevalier, how then comes it by an innuendo? I believe, my lord, it will not be pretended in any case (the case of any civil action), that the person to be found guilty of high treason on this act of parliament, cannot be convicted unless he made use of the same terms, the same words, as are in the act of parliament. My lords, there is no colour, no pretence to say it; if there be such a description of the person in the libel, that the jury on their oaths, who are to consider on it, cannot but necessarily believe, cannot otherwise believe but to be the person, that is sufficient.

That this is so is most apparent, "From the solemnity of the Chevalier's birth, the moral impossibility of putting an impostor on the nation, and the disappointment in the attempt of proving him so, I think is demonstration, &c." If this doth not mean the Pretender, I would be glad if they had told us, who it is. Is it not notorious, that these are circumstances that relate to the person pretending to a right to the crown of these realms? That thus to describe him doth not amount to a sufficient description, nobody that reads it can doubt, though the name used in the act of parliament is not followed; it goes on, "And the great opinion all courts have of this unfortunate prince's virtues, shews he only wants to be known by us to be admired, that we only want the enjoyment of him to make us happy." What other prince is it? Who is it? Can it be suggested to be any body else here meant but the Pretender? What is the conclusion of the libel? The maintaining that such and such persons are Jacobites, and an innuendo to that; that was not objected to; but if the subject of this libel be true, that he hath an hereditary right, a right by the voice of the people, and as it is a limited monarchy, then they must owe his title: the title of whom? of the person that stiles himself king James the third. That plainly shews who it is that is meant in the former part of the libel; and that this hath relation to the crown of these realms. I must say, it can relate to nothing else; the business is to prove the right: whether it be hereditary, by the voice of the people, or a limited monarchy. The conclusion of the libel is to admonish the people to throw off this arbitrary government, and not be ignorant of their strength; these are averments the jury are to enquire into, and the innuendoes are not strained, but plain, and such as arise on the reading of the libel; and such as the gentlemen themselves have not been able to invent any other construction for. They say, here is no direct averment. Mr. Hungerford hath endeavoured to make some difference between maintaining and affirming; he is proving arguments and drawing conclusions; is this maintaining and affirming? Here is maintaining by arguments, by proof, by such as the libel says amounts to a demonstration: say they, here is no positive affirming: what is the first part of the libel? If hereditary right be any recommendation, he has that to plead in his favour: Mr. Hungerford says the sentence begins with an *if*, and is no affirmation at all; and he says it cannot amount to an affirmation, that the Pretender hath a right to the crown of these realms; but I apprehend the necessary sense must be, he hath that, he hath such a right to plead in his favour. The assertion is, "If hereditary right be any recommendation, he hath that to plead in his favour;" so here is more than a plain assertion, he hath that to plead to convince others, that he hath this right.

My lord, if that will not do, what is the conclusion? "The Chevalier being endowed with all princely virtues, so that all rights concur in him;" is not that an affirming, the strongest way of affirming by conclusions from premisses? So that all rights concur in him, as well all other rights as a right to the crown; they would have it relate to princely virtues; that all rights, that is, all princely virtues concur in him.

My lord, it is impossible there can be more full, direct, positive affirming of such a right in this libel, than both these assertions import.

My lord, I do not remember any thing else I think necessary to trouble your lordship

with. My lord, I say, these are all, at least the most material objections that have been made by the gentlemen of the other side, to the proof we have given in order to bring this crime within the act of parliament. Whether this act was temporary, and determined upon the death of the late queen, and the establishment of the succession in the House of Hanover, I am willing to go into that question now, if your lordship and the Court think fit to give your opinion: if not, I am sure the gentlemen that speak after me, will supply any thing that I have omitted.

My lord, I apprehend this is a conclusive evidence against the prisoner, as to the fact charged, that he by printing, maliciously, advisedly, and directly maintained and affirmed, that the Pretender hath a right to the crown of these realms; not in the very express words of the act of parliament, no more was it necessary to make use of the word 'Pretender,' but in terms that amounted to that, and can bear no other construction than that he hath maintained and affirmed, that the Pretender hath a right to the crown of these realms.

Mr. Serjeant *Cheshire*. My lord, I beg leave to make some few observations on what the gentlemen on the other side have said; and the first objection that they make is, that this is a prosecution on a law, which is determined on the demise of the late queen, and by his majesty's happy accession to the throne, and the government taking place in the House of Hanover; the reason of the act hath taken effect, and therefore the act ceases. For my part, I think it was very becoming Mr. Attorney General to take notice of it; but to dwell on that matter, as if it deserved an answer, I think will be unbecoming me. What would be the consequence, but to let any villainous libeller be at liberty to treat his majesty as an usurper? To call out on the people, how long will they be ignorant of their strength? To suppose this, is to suppose the act of parliament so very weak, that it doth not become me any farther to debate it.—Therefore I forbear to pursue it any farther.

There seems to be three other things I beg leave to take notice of: They say we have not proved the Charge, there is an inconsistency in the evidence, and the facts are not proved. I submit to your lordship, if possible, if the evidence that hath been given in this case will not serve, what evidence can? Can it be expected when a man is guilty of high-treason, if he prints such a libel, will call witnesses to it, tell them the contents of it? It is not to be expected but in a clandestine way to be stolen into people's pockets, and read in corners; and to expect stronger evidence, is to expect an evidence of which the nature of the thing is not capable: if there is the least weakness in the evidence, they have taken care to supply it. As to the calling George Matthews for a witness, if I had been a friend to the prisoner, I should have reckoned myself very unhappy in so doing; can it be otherwise, than that natural inclination should prevail upon him to be very tender in this point? But this man hath given the strongest evidence, that if we had not half the evidence, that would have supplied it; doth he not come to the very day? "The 6th of June, my birth day, I met my sister." First he was met by a woman, she had a great suspicion of it; and it was he, that is the brother, was to deliver the brother. "My sister bid me take care, there was something doing in our house, against the government; I myself, upon examination, had great reason to suspect it." If this was known in the family, if the sister told of it, the brother examines into it: doth this weaken the king's evidence, or doth it not strengthen it? Then what he hath written and his brother hath signed, that hath determined it, in the prisoner's owning and confessing it; and what he would verify with his oath, if required.

But supposing (say they) this charge is believed to be true, yet the evidence doth not come up to a charge of printing. *If I* took Mr. Hungerford right, he said, a charge of printing must not be on the man that actually serves as an instrument in the art of printing; will you say this man is guilty? Yes, every one of them. But surely that man will be so that rises out of his bed to call these persons up early, and tells them he hath a job to do, and takes upon him the office of the black boy for expedition, and corrects it with his pen, bags it up and sends it away. Is not this man guilty? I would not have every composer in this case be guilty of printing, if it could be supposed that a composer did not know what it was, which it would be hard to suppose, because they are men of letters; but sure the man that from the original manuscript set it in the form, corrects it; it is once wrong, and he makes it right; doth of the one part one thousand, of the other part one thousand; bears such a share in the printing as is within this act of parliament, or else you will have no offender upon it.

My lord, in relation to this Indictment, they say there must be a direct charge, that he maintained and affirmed that the Pretender hath a right and title to the crown of England: they say true; and if there be that term used, by which it is commonly allowed is meant and understood the Pretender, we asked no forced constructions or strained explanation and unnatural innuendoes, God forbid we should; we hope and expect in justice, there will be the same construction of those words as is usually given to them, when used in speech in all other cases.

I think that what they went upon here, is hereditary right; and right to the crown of this kingdom is not mentioned in this libel; there is an innuendo (innuendo, 'jus hereditarium ad coronam hujus regni'): be pleased to consider what the nature of this thing is; I do not know what the use of speech is, but to be understood.

I do not doubt but every body takes the Chevalier and the Pretender to be the same person; then this person, this Chevalier whose birth was so solemn that it was a moral impossibility of putting an impostor on the nation, and hath personal virtues and endowments, that we only want an opportunity to know him to admire him, and only want the enjoyment of him to make us happy; now what one person in the world can make the people of England happy but the king?

But please to consider, when they speak of right, the subject matter must needs be a right and title to the government and crown of England. Say they, in three remarks, whether it be hereditary right, the voice of the people, what right the voice of the people gives; and the third remark is, limited monarchy; what can that be applied to, but a kingdom, when it is affirmed that the Pretender hath all these rights? That, gentlemen, I do rely upon, is an express affirming and attesting, that he hath all these rights, and consequently a right to the crown of these realms.

Mr. *Lutwych.* My lord, I shall trouble your lordship with saying but very little: The prisoner hath been so unfortunate, by his Defence, to strengthen and confirm our evidence. I shall only mention two or three things insisted upon by the gentlemen of the other side, by way of objection; the one was, and particularly by Mr. Hungerford, that it is not every mechanical writing or printing which is an offence against this act of parliament: The person, says he, is a servant, an apprentice, employed in this trade of printing, and is not as a printer within this act of parliament: Surely a printer may be within this act of parliament: But I must submit it, on the nature of the case, it doth not appear he acted as a servant, but as a master; acted so throughout the whole affair; paid the other people their wages; received the copy himself, and undertook the whole business, transacting it all. This is what the evidence prove, that he assisted in every act of printing; therefore, as to the art of printing, if that is an excuse because it is a trade, and so not within this act of parliament, if the printer will not discover the author, nobody can be convicted on this act. As to the case of the innuendoes, we must submit that to your lordship, whether there is not a positive assertion, which the jury are to try, whether the printing 'de et concernen.' the person mentioned in the indictment, is not printing 'de et con-'cernen.' the Pretender; this being left to the jury, you have a fair and equal trial, whether this person in the Indictment, is intended by him or no. I do not know how any indictment can be framed, unless a man takes this method; it is impossible that any libel should be formed so, to have every word of the act of parliament in it: Then it is proper to bring it in in this usual method, by innuendoes; I take it, without these innuendoes; and if he hath printed 'de et concernen,' a right to the crown of these realms; and that is brought in by an innuendo a right to the crown of these realms; and that matter being found by the Jury, that this paper is printed 'de et concernen.' such a right, that matter of fact being so found, and we apprehend there is sufficient evidence for it, nothing so positively asserted; where is there any forced constructions occasioned by the innuendoes? as to say, when all rights concur in him, is to say he hath a right to those virtues; that is very unintelligible to me, and seems to be a strained construction indeed: we submit it to your lordship on the whole matter, whether we have not plainly proved the prisoner at the bar to be guilty of this Indictment; the rest of the matters we must submit to your lordship's direction.

L. C. J. One thing I must mention to you, whether or no this clause of the act of parliament is in force? You say, the act is temporary, and determined upon the demise of the late queen, and the establishment of the succession in the House of Hanover.

Mr. *Hungerford.* I did not say it was temporary, I did submit it whether it was calculated for such a case as the prisoner's is supposed to be.

L. C. J. If one part is calculated for the queen during her life, so the other part is calculated for the Pretender as long as he lives; there is as much reason to calculate the one for the life of the Pretender, as the other for the life of the queen: if you think there is any doubt in it, I must desire the opinion of my brethren.

Mr. *Hungerford*, and Mr. *Ketelbey.* No, my lord, we had never any such thought of it, nor do not insist upon it.

L. C. J. King. Gentlemen of the Jury, this hath been a long evidence; I will endeavour to state the matter as well as I can. I hope I shall not mistake; if I do, my brothers will set me right.

Gentlemen, This is an Indictment upon a statute made in the time of the late queen. It is an act intituled, "An Act for the Security of her Majesty's Person and Government, and of the Succession to the Crown of Great Britain in the Protestant line." By that act it is enacted, "That if any person or persons from and after the 25th day of March, 1706, should maliciously, advisedly, and directly, by writing or printing, maintain and affirm, that our sovereign lady the queen, that now is, is not the lawful and rightful queen of these realms; or that the pretended prince of Wales, who now stiles himself king of Great Britain, or king of England, by the name of James the 3rd, or king of Scotland by the name of James the 8th, hath any right or title to the crown of these realms; or that any other person or persons hath or have any right or title to the same, otherwise than according to an act of parliament made in England, in the first year of the reign of their late majesties king William and queen Mary, of ever blessed and glorious

Remory, intituled, "An Act declaring the rights and Liberties of the Subject, and settling the Succession of the Crown;" and one other act made in England in the 12th year of the reign of his said late majesty king William the 3rd, intituled, "An Act for the further Limitation of the Crown and better securing the Rights and Liberties of the Subject;" and the acts lately made in England and Scotland mutually for the Union of the two kingdoms; or that the kings or queens of the realm with and by the authority of parliament are not able to make laws and statutes of sufficient force and validity to limit and bind the crown, and the descent, limitation, inheritance, and government thereof; every such person or persons shall be guilty of high-treason, and being thereof lawfully convicted, shall be adjudged traitors, and shall suffer pains of death, and all losses and forfeitures as in cases of high-treason."

I mention only that branch of the statute, because the Indictment is only on that branch.

Gentlemen, this Indictment sets forth, That the prisoner at the bar, that he, as a false traitor to our sovereign lord the king, after this 25th March, 1706, to wit, the 10th day of June in the 5th year of the reign of our now lord the king, at London, in the parish of St. Botolph without Aldersgate, in a certain false and treasonable libel, which he the said John Matthews then and there maliciously, advisedly and traitorously printed, intituled, "Ex ore tuo te judico, Vox Populi Vox Dei," of and concerning the person in the life-time of king James the 2nd, late king of England, &c. pretending to be the prince of Wales, and after the decease of the said late king pretending to be, and taking upon himself, the stile and title of king of England, by the name of James the 3rd, and of and concerning his right to the crown of Great Britain, he did maliciously, advisedly, directly and traitorously declare, maintain and affirm, in one part thereof, in these words, "That from the solemnity of the Chevalier's (meaning the Pretender's) birth, the moral impossibility of putting an impostor upon the nation after the manner pretended, and the disappointment in the attempt of proving him so, I think it is demonstration, if hereditary right be any recommendation, he has that to plead in his favour; and all assertors of limited monarchy must allow, that ought to be preferred, if the person having it is endowed with other qualities fit to govern; and the great opinion all courts have of this prince's virtues shews, he only wants to be known by us to be admired; and we only want the enjoyment of him to make us happy;" and in another part thereof, in these words, "I (meaning himself the said John Matthews) will conclude with three remarks. First, That every assertor of hereditary right must be a Jacobite. Secondly, That every Whig that makes 'Vox Populi' his rule of government must be so. Thirdly, Every assertor of limited monarchy must be so; the Chevalier (meaning the Pretender) being endowed with all princely virtues, so that all rights concur in him." There is another part of the Indictment generally, that he, the said John Matthews, the same day and year, at London aforesaid, in the parish and ward aforesaid, in the same libel, maliciously, advisedly and traitorously did declare, maintain and affirm, that the person in the life-time of James the 2nd, late king of England, pretending to be the prince of Wales, and after the decease of the said late king pretending to be, and taking upon himself the stile and title of king of England by the name of James the 3rd, hath a right to the crown of Great Britain.

This is the Indictment wherewith the prisoner is charged: now whether he be guilty or no, that you are to enquire on the evidence that hath been given. In order to make out this charge, the first witness that is called was John Hutchins; the substance of his evidence was, that in the morning he came to the printing-house of his mother Mrs. Matthews; he says, one Thomas Roberts went with him; that the prisoner at the bar was in bed; that Thomas Roberts seized his pockets, and he see him take out two papers, which he delivered to him; he says, there were other papers in the same room, and likewise in another room, and he went into that room, and in a box there he found other papers; some were found in the room where he lay, others in another room, but which were in the one and which in the other, that he cannot positively say; they were found in the one or in the other; and he asked the prisoner at the bar, whether they were his?—He says, he owned them all to be his. He says, within two hours after he put his mark upon them, and he is sure these are the self-same papers. Afterwards, when he was sent to Newgate, a pretty while afterwards he says to him, You must go to Newgate. What, says he, must I go to Newgate? Upon that he advised him to tell who was the author of the libel. The answer he made was, I know I shall be hanged; I have nothing to do but let my money fly to get a good jury.—This is the substance of that evidence, both upon the examination and the cross-examination. The next witness is Thomas Roberts; he swears he was with Hutchins; and he says, he went into the room before Hutchins, and he secured the sword which laid upon the coat, and then he secured the pockets, and Hutchins went into another room and brought out some papers: he says, afterwards they took up the other people, the prisoners: they could not go all in one coach; he went in one, and Hutchins in another. Then you have it from him that they marked them; and he is positive they are those papers that were found upon him. As for these papers, what they are, I will give you an account when the papers come to be read. He was asked about the papers taken out of his pocket; he says he gave them to Hutchins: as for those two libels taken out of his pocket, he swears positively when he came into

the room he was in bed, and he took them out of his pocket. He was asked as to the proof-sheets, and the several papers produced, and he swears to them all. He says, the 9th September afterwards, when they had orders to carry him to Newgate, when he came into his room, the prisoner asked him if he was going to Newgate? Says he, Is there a bill found against me? He told him there was a bill found against him of high-treason. He said he deserved to be hanged, and he had nothing to do but to let the money fly to get a good jury; but as for those who set him to work, they were ungrateful dogs, and good for nothing except over a bottle of wine or a pot of beer.—These are the witnesses that prove the finding of these libels and the other papers in the custody of the prisoner, and the prisoner's owning them.

The next witnesses were to prove the printing of them. There are two witnesses called, William Harper and Lawrence Vezey. William Harper is an apprentice to Mrs. Matthews. He says, on a Saturday morning, which was the 6th of June, about four o'clock in the morning, the prisoner called him up; he knew he called him up for printing this paper, because, he said, the day before he heard him say he had a job to do: when he came up, he found Lawrence Vezey there, and he saw the prisoner, and he helped the prisoner and Vezey to work off this libel. He remembers the composing part of the paper, and he saw the prisoner at the bar compose part of the paper now produced, and the manuscript did lie before him; and that he composed part of it, but whether all he cannot tell; but says, he composed part, the manuscript lying before him; and he believes the papers now produced are the same.

There is likewise another paper produced, which is wrong imposed: now the wrong imposed paper was found upon him. He says, there was a sheet wrong imposed, and the prisoner at the bar came up and told him he had transposed the pages, and he must alter it; afterwards it was right imposed; he saw it when it was wrong, and afterwards when it was right imposed, and the prisoner at the bar did it; he says, that as they printed them, the prisoner at the bar took them off the press, and there was nigh a thousand printed, and they had done about eight or nine o'clock in the morning; and then the prisoner bundled them up, and carried them out of the printing-room, and said one staid for them. He says, to the best of his belief, the paper now produced was printed off at that time; he knows no other paper printed then; he says, he at that time read the title, and that is all.

Gentlemen, He was asked upon his cross-examination, whose this printing-house was? He says, it is Mrs. Matthews's; but the prisoner, who is her son, always carries himself as master; and he doth not know whose hand-writing this manuscript is.

Then there is another, the next witness, Lawrence Vezey; he swears, that he belonged to Mrs. Matthews's printing-house; he came there in June last, in order to go to work: when he was in the court-yard, he called out, William, who was the apprentice; who opened his window and told him the door was open: upon that he went into the press-room, and while he was there his master the prisoner came up and told him, he had a job to do; that he afterwards went to market; that in the mean time, when he came back, there was a form composed of "Vox Populi Vox Dei;" who composed it he cannot tell; but the prisoner told him, he had transposed the pages, and he took it out of the form, and lays it on the stone, and transposed it right. He laid it on the press, and the prisoner pulled it off himself, the proof that was right.—That a morning or two afterwards he came again, and then they worked off the impression, and they printed about a thousand of each; and after the job was done, he received 14*s.* for Harper's share and his own; Harper owed him money, and so he kept all upon his own account. The proof-sheets are produced, and he upon the view of them says, they are the same. He says, one of the papers is wrong imposed; he never read the book; but, on his cross-examination, he says, there is a line at the top, and a flower over that. He was asked, whether he knew George Matthews? He says he doth, but he never saw him since he was taken and carried up by the messengers.

There are two other witnesses called to give their opinion of printing: you hear from both of them, that these are the proof-sheets, or revised sheets, which are in effect the same; and that appears from the amendments upon them; and one of them is right imposed, and the other of them is wrong imposed. Having made this way for the reading this libel, and the papers found in his pocket, they are produced; and the libel that was found in his pocket hath been read, and I believe they will consent on both sides, that you shall have the libel with you, when you go out to consider of your verdict. There are two of them produced, and in those libels all these words as laid in the indictment are there; the beginning of the libel is laid in the Indictment, and the latter part: there is a clause in the latter end not laid in the Indictment. There are likewise produced two proof-sheets, of which, all the witnesses say, there is a sheet right imposed, and a sheet wrong imposed, which they think to be the same the prisoner worked off: then there are eight or ten superfluous half-sheets. Mr. Darby says, it is impossible to make the half-sheets agree, so as that there must be superfluous half-sheets. In these libels there are contained all these words that are in the Indictment.

Now to fix this fact on the prisoner, they have produced Mr. Delafay and Mr. Buckley. Mr. Delafay, he says, that these papers now produced are the papers which the messengers swore they took upon him; and when he was

examined touching these papers, he owned them to be his, and the papers then lay before him on a table, and he owned that these papers were taken from him; and as to answering any other questions, he was shy. Afterwards he was brought before the lords justices; the brother gives you an account how that happened. When he was brought before the lords justices he was told, that he was charged, with two other persons then named, with printing such a paper; the answer he gave was, So it seems. He was asked, how he came to be concerned in such a business? He said, it was necessity. He was asked, who was the author? but he would not tell. This was the first time. He says some time afterwards, upon a letter received from the prisoner, he was brought before the lords justices again; he told them a foolish story, but would not tell who was the author: on the evidence of Mr. Delafay, I did not think it ground sufficient to read the letter, though it was afterwards sufficiently proved by an evidence he called himself.—Mr. Buckley, all he says is, that he was present at the first examination; he says, when the messengers brought these papers, and laid them down on Mr. Delafay's table, he asked him whether these papers were his? He said they were. I asked him how he came by them? He refused to tell me. He says he told him, you are charged with printing these papers, which is a great crime; he made no answer, but took snuff. This is the substance of the evidence given for the king against the prisoner at the bar. Now, on the other side, what is insisted on by him and the counsel for him are several things; some points in law, and several points in fact. The first is, that this law was temporary; that is over, and is so plain they did not think fit to insist upon it. The other is, that supposing the matter contained in the Indictment to be proved upon him, it is not high-treason within this act of parliament; that it is not to be supported against him but by these innuendoes.

Now, gentlemen, as to that, I do agree with what the counsel for the prisoner say, that by an innuendo you shall not put a meaning upon a man which is not his. This is not the case: the case here is a positive charge, that the book he wrote relates to the pretended prince of Wales; and the matter of fact you are to try is, whether it is so or no.

Now as to that the objection is, you cannot understand what is meant by the Chevalier to relate to him, from the solemnity of the Chevalier's birth, and the other things which follow.

I take it as to that, we are to understand it as all mankind do. You are to consider, whether that book is written concerning the pretended prince of Wales, and his right to the crown; therefore the first consideration is, whether this libel is written concerning the Pretender, and his right and title to the crown of England, then all these innuendoes signify nothing; for the innuendo relates to a thing that is proved. Now, gentlemen, it is not said, nor the counsel for the prisoner do not any way shew who else it is applicable to, or whose right it is concerning.

That is the matter of fact you are to consider: is it possible for men of common understanding and sense to imagine, that this right is concerning any body else but the Pretender? If so, then the defendant will be acquitted.

Therefore the first part of your consideration will be, whether this libel relates to the Pretender, and his title to the crown of England; as to the words themselves, they do not appear in the indictment; the treason is, to affirm that the Pretender hath any right whatsoever to the crown of these realms; and therefore, as to the affirming that, say they, it doth not appear in the indictment.

Then the next consideration will be, whether or no the prisoner at the bar hath printed it. It is printing, and declaring by printing, that the Pretender hath a right to the crown of these realms.—They say, printing is a mechanical art; but if nobody else appears to you to be the printer, and if people will use dangerous arts, they must use them lawfully, how mechanical soever; or if he caused it to be printed, that makes no odds.

The first witness they call is George Matthews, brother to the prisoner at the bar. He says, he remembers very well, the more exact because it was his birth-day, as he was going to his mother's house, his sister met him, and told him something was printing in his mother's house; that he examined Vezey and Harper both in his closet privately, and publicly before the rest of the people, and asked them, whether they or his brother had printed any libel against the government? They told him, No, they had not; this is what they told him. He says, his brother is a young man, that you see he is; he was an apprentice to his mother. Then he gives you an account of the manner of their printing.

He was cross-examined concerning this letter, which Mr. Delafay did speak to, but could not prove: He says, he went home and drew a letter, and after he had drawn it, he made some amendments of his own. It was the common vogue that his brother was the printer. Upon this he went to Newgate to carry this to his brother; his brother came to the grate, and he gave it to him through the grate, and in six or eight minutes time he brought it, and delivered it to him again, with his name signed to it; and he believes this is his brother's hand-writing: That proves the letter to be his, and makes it evidence. The letter being read, the purport of the letter is this: "I John Matthews, being heartily sorry for the crime I have been guilty of against his most sacred majesty king George, and his administration, and from a thorough conviction of my errors, and unfeigned contrition for them:" There he professes his hearty sorrow for his errors and offence; then it follows, "I do hereby make the following declaration and confession,

that the libel now in question was given me by one John Broderick, as also the money for printing of it; and further I declare, that the said John Broderick took the foul proofs of the paper aforesaid from me in order to correct them; and when they were printed fetched them away."

This Mr. George Matthews, though produced as an evidence for the prisoner at the bar, they now make use of him as a further evidence, that the prisoner at the bar was the printer of this libel, as he acknowledges that he received it from Broderick, and received of him money for printing of it; he acknowledges likewise, that he had three guineas the day he printed it, and seven guineas afterwards of the said Broderick.

Then as to Vezey's character—they call Thomas Tovie: he hath known him a year and a half, and can give him no character good or bad. Then they call Mr. Mott; he says, he never was but once in his company, he knows nothing of his character. Then they call William Boden; he says, last Monday was se'nnight he saw Vezey, and he told him he was an evidence in this cause, and he had been with the mother of the prisoner at the bar, and told her, if she would give him money he would keep out of the way; that he went to St. Albans, and staid there nine days, and no money coming, he came in, and was a witness on the other side.

By way of reply, they call two witnesses to support Vezey's character, Robert Bentley and Robert Procter: They believe him to be an honest man, and never heard any ill of him.

This is the substance of the evidence that hath been given on both sides.

Gentlemen, you are upon this to consider, whether the prisoner at the bar hath maliciously, advisedly, and directly declared, maintained, and affirmed, by printing, that the Pretender hath a right to the crown of Great Britain.

The words in the Indictment seem very sufficient, supposing it relates to that matter, that he hath a right, and all rights do concur in him.

Now, in the first place, you are to consider, whether, by the words contained in the libel, is meant the Pretender, and that he hath a right to the crown of England: you are to consider, it is not necessary to have the same name in the indictment as in the act of parliament; but you are to consider, whether the person in the libel, that is called the Chevalier, and is the person spoken of in the libel, and the person called the Pretender in the act of parliament, be not the same, and the person commonly called the Pretender; and whether that libel doth declare, that he hath a right and title to the crown of England. This is the first thing for your consideration.

In the next place, supposing that to be so, the next thing is, whether he hath done it maliciously and advisedly. The fact implies malice; and the doing of a thing advisedly, is doing it with thinking. The witnesses say, for several days they were desired to assist him.

Upon the whole, if it shall appear to you, that the prisoner at the bar hath printed this libel, or caused it to be printed; and that by this libel he hath maliciously, advisedly and directly maintained and affirmed, that the Pretender hath any right or title to the crown of these realms; then he is guilty of the indictment, otherwise you must acquit him.

[The Jury withdrew, and after a short stay' returned and brought in the prisoner Guilty.]

Att. Gen. My lord, I humbly pray the Judgment of the Court against the prisoner at the bar.

Mr. *Hungerford.* My lord, I humbly hope that your lordship will not proceed to give judgment upon this indictment, but that judgment shall be arrested.

If it shall appear to your lordship, that the offence made high-treason by this act is not described in the indictment with such a certainty as the law doth require, then in consequence there is no offence; and if so, there can be no offender. I take it to be a rule in law, that where a Latin word hath several meanings, or doth denote several things, and in the indictment or declaration it is intended that it shall import one single sense or meaning only; in order to restrain it to that single meaning, it must be assisted with an 'Anglicè;' this was the rule the judges went by in the case of Hexam and Coniers, 4 Jacobi secundi, 3 Modern, folio 238, where an ejectment was brought 'de uno tenemento.' This was adjudged naught, though after a verdict; because the word 'tenementum' signified several things, in truth every thing that can be held, as titles, advowson, an office, an house, and under that head, any sort of houses, a brewhouse, &c.

And now, to apply this to the present case: The thing made treason by the act is writing or printing; the charge upon the unfortunate youth at the bar is, that he 'impressit' such a libel; which word, with humble submission, doth not necessarily import printing, unless explained by an 'Anglicè,' for the word 'impressit' may signify several things besides printing; as sealing, stamping, and is usually made use of to signify these things. If I were to say that such a one stamped a book, I should say he 'impressit libellum;' and the common language of attorneys in their bills, where they charge the stamp-duty is, 'pro impressione regali,' &c. And as to the original meaning of the word, it could never be taken to express printing: The Romans had no printing; and where they had not the thing, they could not have the appellation proper for it; for things were before words, which are but the signs of them: wherefore I humbly hope, that judgment will be arrested in this case, and the rather, for the reason that was given by the judges in Griffith's case, that an indictment being a declaration at the suit of the king,

against the life of a subject, ought to set forth a sufficient certainty of the fact.

Mr. *Ketelbey.* My lord, the last service we can do for our unfortunate client is, to move in arrest of judgment; and if the words inserted in the indictment to set forth the substance, the very gist of the treason, are uncertain, and do not sufficiently denote the offence intended to be charged; this is the proper time, as we apprehend, to take advantage of that defect.

My lord, this word 'impressit' is an equivocal word, of different significations, imports several senses in English; and though we should admit that it likewise signifies to print, yet if it equally signifies other things, if no Latin word be added to it to restrain, nor any 'Anglicè' to explain the sense of it, we hope your lordship will not proceed to judgment upon this Indictment; and in this case more especially, since printing is essential to the offence of which the prisoner is found guilty; and some of the significations of this word 'impressit' are criminal, and others not criminal within this act of parliament: And for this I shall only cite the common known case of an action of trover 'de uno pullo' without any Latin adjective or 'Anglicè;' there the declaration has been held to be naught, for the uncertainty, even after a verdict; and we apprehend the objection will hold much stronger in an indictment for high treason, and that an 'Anglicè,' or some other proper Latin word, ought to have been annexed, to pin down the word 'impressit' to that sense only, which the act of parliament hath made criminal.

But, my lord, I shall beg leave to go a little further, and to observe upon the word 'imprimo,' that it doth not, nor can signify printing at all: 'imprimo' is a classical word, and as such cannot properly signify printing, which is a modern invention, never known in the world till many hundred years after the word 'imprimo' had obtained its just and determinate sense; but if they will have a Latin word for printing, without the assistance of an Anglicè, it must be by such phrases as will import that, and that only; such as the best modern Latinists have made use of to express their sentiments, when they treat of that subject.

This is what we have to offer to your lordship against the word 'impressit,' and hope it will be thought sufficient to arrest the judgment.

Attorney General. My lord, I do not know how this motion comes to be made now, after the opinion given by your lordship. If this be any thing, it is improper Latin; that is, it is not a word proper to denote what is intended to be expressed in this indictment; that is the meaning of this objection, which should have been made before plea pleaded and evidence given, and not moved in arrest of judgment, according to the statute for regulating of trials in cases of high treason: that if the word 'impressit' or 'impressione' is not a proper word to denote printing, which is the amount of this objection, they are not entitled to take advantage of this as improper Latin now after plea pleaded and issue joined. What I shall say (still denying they are right in time, but to satisfy the gentlemen and mankind) in answer to this objection, is, if it had been made before plea pleaded, there is not the least colour in it, whatsoever signification the word may have, taken abstractedly; if it be a classical word, and was before the invention of priuting, which was but four or five hundred years ago, I believe nobody that is acquainted with the Latin language, but will allow that the usage of two or three hundred years will give a sanction and signification to any word, though it hath been applied to a fact not at that time used; therefore 'imprimatur liber' is as much known of all men of literature, or all bodies of literature, to mean that that book shall be printed, as any Latin word whatsoever is known what it means. Let them look into any books licensed by any of the universities, what is it but 'imprimatur' by the archbishop? what is it but 'imprimatur' by the secretaries of state, or any other person? Is there any other word made use of but 'imprimatur,' when any trial hath been printed by the authority of your lordships the judges, the word is used there; look into a law-book, have they not seen it signed with the word 'imprimatur' under the authority of all your lordships the judges? What can give more sanction than the opinion of all the judges to the proper use of this word? What other word is there for the denoting of printing? Why, my lord, 'imprimatur libellum,' it is the joining of it to 'libellum,' diversifies it from any other meaning, however indefinite, or, as they say, equivocal, the word is; it is according to the subject-matter to which it is applied: if to a book, it is to be applied to the printing of that book. Is this the first time this word 'impressit' was ever used in an indictment? I appeal to every record, whether ever any other word was used, or 'Anglicè' put to it, but the subject-matter it was applied to? I say still, they are in the right to do every good office to serve their client; but they have mistaken their season; they are excluded by the words of the act of parliament, and the opinion of your lordship. But still I insist, this is the constant opinion of the use and application of this word by men of the law, without making use of any 'Anglicè,' by all men of literature and bodies of literature; if all these experiences can give a sanction to the use of that word, we have that to justify us in making use of the word here.

Serjeant *Cheshire.* I perceive the gentlemen do not say this is an improper Latin word, because they know then this is not a proper time to offer it in arrest of judgment: but, be that as it will, I beg leave to insist upon it, that it is a proper Latin word, and properly applied; and I would beg leave to consider, whether words that may be capable of several significations, when applied to particulars, may not be understood what they mean, without any 'Anglicè?' If I mistake not, 'Liber,' that very word, may be capable of four significations: it signifies 'Bacchus,' it signifies 'free,' it signifies 'a

book,' and it signifies the 'bark of a tree.' Now, 'imprimere hunc librum,' would any body think this improper without saying 'imprimere hunc librum,' *Anglicè* this book? Therefore, admitting 'impressit' could be capable of other significations to many purposes, yet when it is 'impressit libellum,' it must be understood to be printing; as when it is 'imprimere hunc librum;' they should say they do not mean a book, but 'impressit' the bark of a tree. I think this objection is so contemptible, that it ought not to have a further answer.

Mr. *Latwych.* My lord, as to the time, I only beg leave to mention the clause in the act of parliament; that gives him the liberty of having counsel, and copy of the indictment, and several other privileges; therefore, as this law hath given him these privileges, which they had not before, it comes in by way of proviso, and takes away this part of the advantage they had before, that they shall not take advantage of any mis-writing, mis-spelling, false or improper Latin, after plea pleaded and evidence given: so that they are out of time, as they have had the advantage of this act of parliament, if it depended singly on that matter. As to the notion of the word 'impressit' being improper, I believe somebody would have hit on this objection before, if any thing in it; for it hath been the constant method to use this word 'impressit,' to signify 'printed,' without an 'Anglicè,' or any thing like it. I believe the precedents are all so. We apprehend it is a very vain objection, and no weight in it; and therefore we hope no regard will be had to it.

Mr. *Reeves.* I must agree, that when 'imprimo' was a Latin word, it was long before printing was; but when printing came to be in use, that Latin words we see have been improved; and though they have signified other things, yet when they come to be applied to particular circumstances, are improved thereby. Every body knows what that is, when it determines the signification of the word according to the subject-matter. Nothing is more plain than to determine it not to signify any thing but printing, to say 'per prædict. impressionem,' he declared and affirmed by printing; no other sense can be put on the word but by printing; and since it hath gained that use, no other word is made use of either in legal proceedings or otherwise; and what other word can be applicable to this 'impressit libellum,' but printing? We humbly hope this is as clear a case as can be. They admit, if we had added an 'Anglicè,' it would have been proper; I do not know any 'Anglicè' that would have helped it, taking it to be an improper word: though, as we apprehend, they are not in proper time to make this objection; it should have been before plea pleaded.

Mr. *Bootle.* Admitting they are in proper season to make this objection (which we apprehend they are not,) there is nothing in the objection. This is the new light that hath sprung up in this cause. The first objection was equally of consequence with this; they do not pretend that any other proper word was used by the Romans; although they have used this ever since the use of printing was found out, as the proper word to signify printing.

I believe there is not one instance to be shewn, wherever any other word was used to signify the printing of a libel. They say, it is of an equivocal sense, and may mean stamping as well as printing. In this case, as the word 'impressit' is coupled with other words, it cannot mean stamping 'impressit libellum.' Is it possible for any press or stamp to signify 'in his Anglicanis verbis?' Therefore, to shew how groundless this objection is, that it is impossible it should have any such meaning, can a stamp set forth all these English words in the indictment? That he 'impressit,' therefore, must signify that he printed. My lord, with great submission, we think it is an objection taken merely for the sake of objecting, because driven to the last extremity. As for the instance of 'uno tenemento,' and 'uno pullo,' it is not to the purpose; 'pullo' signifies any young, and 'tenementum' is well known in the law for a very universal term; therefore it becomes necessary to be explained. This word cannot want any explanation. Therefore we hope no regard will be given to this objection; and pray your lordship's judgment against the prisoner at the bar.

Mr. *Hungerford.* My lord, they object to us, in the first place, that we are improper in point of time as to this objection; that it ought to have been made before the prisoner pleaded or evidence given. And it is further said, that though we were proper in point of time, yet there is nothing in the objection itself. As to the time of making this objection, surely, considering the nature of it, it may be made at any time. The offence made treason by the act of parliament, is printing: we say, there is no word in the indictment which imports (at least necessarily imports) printing; and, if so, then consequently there is no charge of treason before the Court: and surely, it may be at any time urged, that the proceeding is null and void, if there be any fatal error in it whereby to make it so. But the king's counsel seem to have waved this objection as to the impropriety of the time, by going into the nature of the objection itself; and I shall therefore apply myself to what they have said upon that head.

Mr. Attorney observed, that the word used in licensing of books is 'imprimatur,' and that 'impressit' (which is the same verb in the active mood) is the word used in the indictment. I will admit it, that 'imprimatur' is used for licensing the printing of books, particularly when books are licensed by the universities (and for my part I wish all books were licensed by them, I am sure there would then be no heresy or treason in them); but generally licences for printing are in English: but that which I offer to your lordship's consideration in this matter is, that though in an university 'imprimatur,' a loose

or allegorical word, which may have several meanings, may be made use of, yet we are now in a court of justice, in a criminal case, in a case of life and death, where if the chief word which describes the offence hath various significations, it shall not be taken in the worst sense or meaning, unless restrained to that sense by an 'Anglicè.'

Mr. Serj. Cheshire, by way of illustration of what he hath said in this matter, was pleased to be very critical upon the word 'liber:' it signifies, says he, a 'book,' it signifies 'Bacchus,' it signifies 'free,' and it signifies the 'bark of a tree.'

Give me leave, my lord, to follow him a little in this criticism. I believe the word 'liber' doth not denote so many different things as the very learned serjeant would seem to intimate. In the very early ages of the world, before writing was a common accomplishment, before vellum, parchment, or paper were found out, people writ upon the inward rinds or barks of trees, which bark was called 'liber;' and, from thence, when parchment or paper was, in after-ages, writ upon, that was called 'liber' too: the same practice hath likewise given occasion that 'codex' signifies both the bark of a tree, and a book: as for 'liber,' 'free,' it is always used in an adjective sense, and a noun substantive is always expresst or understood. And as for 'liber' signifying 'Bacchus,' the serjeant hath been at dinner, he hath eat and drank plentifully, I dined with him, and I find he hath forgot part of the name of Bacchus, for he is called 'Liber Pater,' and not 'liber' only, that I remember.

But what I insist upon in this matter, my lord, is, if a man were to be charged with stamping of a book or paper; it would be said that he 'impressit' the book or paper; and the charge against Mr. Dyett for forging the law-duty-stamp was in those words; and since, by the charge of 'impressit libellum,' stamping (which is not high treason) may be as well meant as printing, unless explained by an 'Anglicè;' I humbly hope judgment shall be reversed in this case.

Mr. *Ketelbey*. My lord, I shall be very short in what I am going to say. It hath been insisted on, that the common form of licensing books to be printed, by the judges, archbishops and universities, is by using the words 'imprimatur liber cui titulus, &c.' If any one instance could have been produced where my lords the judges had used that word in allowing the printing of any books, such a precedent would have stopped our mouth as to this objection; but I have here in my hand a large volume of trials and other tracts, that have been licensed, some of them by the judges, and others by the secretaries of state, and lord mayors; yet the said 'imprimatur' is not used in any one of them.—All these licences are in English, and I do not remember any one law book that was ever licensed by the judges in Latin.

I pay all the respect imaginable to the archbishops and bishops, and to what they do; but, as I take it, their licences are generally signed by their secretaries or chaplains: whether they have any legal authority for the licensing of books, or if it amounts to any thing more than a bare recommendation of the goodness of a book, under the protection of a great name, I cannot tell; and therefore with the utmost deference submit it to your lordship's judgment, whether any weight can be laid on those instances.

The universities have certainly, at this time, a right to licence books printed within their respective jurisdictions, and I believe they generally use the word 'imprimatur,' and it is signed by the chancellor; but this privilege is of a very late date, it being not many years since books were first printed there. I pray God bless the universities, continue to them their present authority, and increase it: but we must not admit that the modern use of a word, though by those learned bodies, can give such a sanction to the sense of it, as to make it a conclusive answer to our objection.

Mr. Bootle says, it hath been a word used ever since printing was found out, to signify printing, and that no information hath been brought for printing a libel, where that word hath not been made use of; but he is not pleased to mention any ancient precedent, nor any case where this point hath been judicially determined; indictments for printing libels were very rare in former times, and are scarcely to be met with in the old law books; lately indeed they have been more frequent, but I believe have not always been drawn by the most skilful hands; and if some mistakes in them have been past over in silence and without an exception taken to them, we hope a faulty modern precedent, upon the rolls in the crown-office, shall not have more weight with it than the universities.

They are pleased to insist, that we have not the liberty now of making this objection, as being out of time; because, in the point of false and improper Latin, it ought to have been offered before plea pleaded: But, my lord, we must beg leave to put this on a right foot; we do not object it as false and improper Latin; we say there is no offence charged in the indictment: the act of parliament says it must be by printing; if they have used a word that doth not signify printing, the indictment cannot be good, this cannot be high treason; my lord, we submit it to your lordship.

The Judges were all of opinion, that the objection did not come out of time, because they did not take it for false and improper Latin.

But all agreed, the word 'impressit' was very proper to signify printing, as used in the indictment, and that there was nothing in the objection.

Mr. *Hungerford*. My lord, there is another objection, which I humbly take the liberty to make: it is this; the offence made treason by this act of parliament is, that if any per-

son shall maliciously, advisedly and directly, by writing or printing, maintain and affirm that our sovereign lady the queen, that now is, is not the lawful and rightful queen of these realms, or that the pretended prince of Wales, who now stiles himself king of Great Britain, &c. hath any right or title thereto; the language of the act of parliament is, 'and now' (that is, at the time of making of the act) 'stiles himself' so and so: but the indictment doth not pursue the words of the act of parliament, in describing the person of the Pretender; for the words in the indictment are these; "Personæ in vita Jacobi secundi nuper regis Angliæ, &c. pretend. esse princip. Wallie, et post dicti nuper Regis decessum pretenden. esse, et suscipien. sup. se stilum et titulum regis Angliæ per nomen Jacobi tertii;" so that 'who now stiles himself, &c.' is not mentioned in any part of the indictment, and consequently the person described or intended by the act of parliament, and the person described in the indictment, may be two different persons; for if a person doth now, or five or six months ago, stile himself king of Great Britain, it answers the description in the indictment of stiling himself king of Great Britain 'post dicti 'nuper regis decessum,' for it is not said—immediately after his death, and yet that person may not be the person who at the time of the act took upon himself the title of king, &c. and since, by the wording of the indictment, it doth not appear that the person there described is the same person with him in the act of parliament, the indictment ought to be assisted with an averment, that the person described in the indictment is 'una et eadem persona' with him described by the act of parliament, whereby the identity of the person would appear; and, for want of this averment or following of the exact words of the act of parliament, we hope this offence is not sufficiently laid, whereby to affect the prisoner at the bar.

Mr. *Ketelbey.* If they had said 'immediate post decessum,' they had taken in a greater length of time, than now they have done; and having only laid it 'post decessum,' generally, it may, or it may not, be immediately after the death of the late king James; and then that intermediate space of time is not accounted for or ascertained in the indictment, without such averment as we contend for. The indictment ought to have been certain, in all respects, and to all intents and purposes whatever; but here, since the late king James died before the passing this act, it doth not necessarily appear, it is no natural consequence, that the person who in the life-time of king James the second pretended to be the prince of Wales, is the same person that after his decease pretended to be and took upon himself the stile and title of king of Great Britain.

Att. Gen. My lord, we are not bound, with submission, to pursue the very terms of the act of parliament. If, upon the face of the indictment, it appears the same person is described in the indictment as in the act of parliament, it is sufficient. There are two descriptions of this person in the act of parliament; the one is, that the pretended prince of Wales, who now stiles himself king of Great Britain; the one is the pretended prince of Wales, and the other king of Great Britain. If Mr. Hungerford may be allowed to mean there may be many Pretenders, though I believe he would not suppose that there were any before the Pretender himself, that called himself the prince of Wales; so that that is plain who is meant by the Pretender. The second part of the description, "who now stiles himself king of Great Britain," 'post decessum Jacobi secundi nuper regis Angliæ,' is not that 'semper post decessum;' was not the 'decessum' of king James the second before the making of the act of parliament; and is it not the pretended prince of Wales who, immediately 'post' and 'semper post decessum,' stiles himself king of Great Britain, that brings it down to the time of the act of parliament, and continues it to the time of the indictment laid? The 'post decessum,' as it stands here, over-reaches the act of parliament in point of time, goes along with it, and continues with it till the indictment preferred.

Serjeant *Cheshire.* My lord, the expression in this Indictment says, who in the life-time of king James the second pretended to be the prince of Wales, and after his death pretended to be, and took upon himself the stile and title of king of England. The expression in this indictment says it more plain than as they would have it; the late king James was dead before any of the acts of parliament, and that which they would have us have said, is a much less assertion, and not so proper and pertinent; for when he died before the act of parliament, he assumed now, (he that in the life-time of king James the second pretended to be prince of Wales, he assumed new) and ever hath, the stile and title of king of England; so that we have taken in both the times of these acts of parliament, in the life-time of king James the second, and after his decease.

Mr. *Hungerford.* My lord, I will crave leave to offer a few words by way of reply. The description in the act of parliament, as Mr. Attorney truly observes, consists of two parts, viz. such a person as in the life of the late king James pretended to be prince of Wales, and who, viz. at the time of the act, took upon himself the title of king, &c. The words are in the conjunctive, and therefore, if the description in the indictment takes but one part of the description in the act, it is an imperfect description, and consequently the high-treason not perfectly laid. If it had been, as Mr. Attorney seems to hint, that the person described did 'semper post decessum' of king James, or immediately 'post' his 'decessum,' take upon himself the title of king, &c. it would have been well enough, because it would have amounted to an averment, that the person in the act, and the person in the indictment, was the same individual person; and for want of

such a certainty, we humbly insist, they have failed in a material part of this accusation.

L. C. J. This act of parliament makes it high-treason only with respect to this individual person, who is here called the pretended prince of Wales: Now, if the person hath no where any christian name, or sirname, must we not take notice of the description of him, and how he is called in almost all the acts of parliament? In one act of parliament he is called the pretended prince of Wales: In the act on which this Indictment is founded, he is called the pretended prince of Wales, and that now takes upon himself the stile and title of king of England: In the Abjuration Act, he is called by the name in the indictment; if it be the same person, must not we take notice, this is one and the same person? and if so, no matter which of the names he is described by.

Mr. *Ketelbey.* My lord, I beg leave to mention one word more. The act of parliament says (any right to the crown of these realms,) and so it goes through in the plural number (hath any right or title to the crown of these realms;) it relates to the Union of the two realms of England and Scotland, and from one end to the other mentions them plurally; they have expressed it in the indictment only in the singular number 'hujus regni,' and afterwards, 'innuendo, coronam hujus regni.'

Att. Gen. The words are 'Magnæ Britanniæ.'

Mr. *Ketelbey.* With submission, the words are, 'innuendo, jus hereditarium ad coronam hujus regni,' without 'Magnæ Britanniæ.'

Att. Gen. The words in the beginning of the indictment are, 'de et concernen. coron. 'Magnæ Britanniæ;' you have got upon innuendoes again.

Mr. *Ketelbey.* Why, if you do not like the innuendoes, you may leave them out of the case, and see how it will stand then; if the last innuendo—('jus hereditarium ad coronam hujus regni') be laid aside, the words of the indictment will be barely, "he hath that to plead in his favour," without any thing more, and then it doth not appear, if you go through without the innuendoes, that it is any offence against the statute.

Mr. *Hungerford.* My lord, the objection is this, the act of parliament makes it high-treason to affirm, &c. that any person hath a right to the crown of these realms; which expression comprehends Great Britain and Ireland; in the indictment they have not mentioned Ireland, it is only 'ad coronam hujus regni;' it is indeed 'Magnæ Britanniæ' in the beginning; though England and Scotland make one united kingdom, Ireland is not included.

Att. Gen. My lord, we have done, and pray your lordship's Judgment.

Then the Recorder passed sentence, as usual in cases of high-treason; and he was executed at Tyburn, November 6th, 1720, aged nineteen. I don't find he made any Speech, or left any Paper behind him.

[The following Case of a conviction of Treason for publishing a treasonable Paper, I have extracted from the Harleian MSS. in the Brit. Mus. N° 6846, art. 104, fol. 335. I know not exactly the date of the Trial; but it seems likely that sir John Trenchard was Secretary of State when the parties were carried before him. According to Beatson, Trenchard was Secretary of State from 1692 to 1695.]

The Trial of William Newbolt and Edward Buttler, Printers, for High Treason, in compassing and imagining the Death of their most sacred Majesties King William and Queen Mary. [Now first published from the Harleian MSS. in the British Museum.]

ON Friday, the 8th of this instant September, being the 3rd day of this sessions, the prisoners were brought to the bar, and were arraigned upon an indictment of high-treason, for composing, printing, and publishing the late king James's Declaration,* &c. To which Indictment they both pleaded Not Guilty; and for their trial they put themselves upon God and their country. Then the jury was called over, and the prisoners having made their lawful challenge to the number of 26, the Court proceeded to their trial, and the gentlemen sworn to try the issue were those whose names follow:

Jury.

Wm. Underhill,	Andrew Cook,
Wm. Withers,	John Skinner,
Francis Chapman,	Richard Bowler,
Henry Jones,	Richard Richmon,
Henry Bradberry,	Samuel Lynn,
Edmond Salter,	John Preston.

Then the prisoners desired they might have pen, ink, and paper allowed them, which was granted; and then the Indictment was read again, which set forth, that the prisoners stood indicted by the names of William Newbolt and Edward Buttler, of the parish of St. Margaret's, Westminster, gents. for that they not having God before their eyes, but being moved and instigated by the power of the devil, and being enemies of our sovereign lord and lady the king and queen, and minding and intending to raise war and rebellion in this kingdom, and the government of this kingdom wholly to subvert, alter and change, and a miserable slaughter amongst their majesties' subjects to make, and to depose and put to death their most sacred majesties, on the 20th day of May last past,

* See this Declaration, vol. 12, p. 1208.

and divers other times, as well before as after, they did compose, print and publish, or cause to be composed, printed and published, a most false, scandalous, malicious and traitorous libel, entitled, "His Majesty's most gracious Declaration to all his loving Subjects," signed *J. R.* and beginning to this effect: "When we reflect upon the calamities of our kingdom, we are not willing to leave any thing unattempted that may be for the good of our subjects, and to regain our own rites,"* &c. reciting the Declaration at large.

Then the counsel for their majesties opened the nature of the offence contained in the indictment against the prisoners; how that they stood accused for high-treason, which indeed was a crime of the highest nature against any person or government whatsoever, and the offence alleged in the indictment was printing of a treasonable libel, entitled, "The late king James's Declaration," which tended only to the deposing of the king and queen, and to the bringing of them to final death and destruction, and that whosoever does go about to depose the king and queen, this was a compassing, imagining, and contriving the death and destruction of the king and queen, and in the libel there was contained the most rank and basest treason that could possibly be imagined, in that it did set up the title of the late king James against the present king and queen, and the government; and this did tend to incite and stir up all their majesties' subjects to take part with their enemies against them, and that the prisoners having printed the said treasonable Declaration, this was an overt act of high-treason in law; therefore if it was proved to them, the Court* did not doubt but that they would find the prisoners guilty of high-treason. And the Court* hoped that the gentlemen of the jury were men so conscientious and so judicious, that they would value the welfare of the government so much, as to find a just and true verdict against the prisoners, &c.

Then the evidence for the king and queen were called and sworn, the first of which stood up and gave account, that about the 20th of May last past, he was in company of the prisoners, at the Ship, in Charles-street, in Covent-garden, where they had an haggas to dinner; and after dinner the man of the house brought up word, that one captain Griffiths was below and wanted to speak with Mr. Newbolt; he went down, and when he came up again he told the company, that captain Griffiths wanted 10,000 of the Declarations for the use of the country, and that he would give 15*l.* for them. About four or five days afterwards, he being there again, Mr. Buttler pulled out a Declaration out of his pocket, and one Mr. Farr was there at the same time, and looked upon it, and said, that it wanted the king's-arms to it, and the letters 'God save the King;' so Farr said at last, Come, we will go to my lord's and do it, (meaning at Douglass's, where the printing-press stood), and that was to set the Declaration; and after this, on the 1st of June following, he met Buttler in Charles-street again, and he had some Declarations about him, and his heart failed him, and he gave them to this evidence; and then the messenger went and took them, and they were carried before sir John Trenchard, and there they confessed the matter; and there were thirty of them found upon Buttler, and that they were to have 15*l.* for printing 10,000 of them.

Another evidence swore, that the prisoners had a printing-press, and this was kept at one Douglass's, at Westminster, and there they printed the Declarations, and that both of them were concerned equally in the matter; and that that* were seen to compose and set the letters in the press, and the frame so set by their hands was brought into Court, on which the Declaration had been printed, and sworn to be set by the prisoners; and all this was fully and clearly sworn against them by the king's evidence.

The prisoners did not deny the fact, nor that they did not print this Declaration, but alleged that it could not be treason to print; for nothing could be accounted treason but what was contained in the 25th of Edw. the 3rd, now printing was not in that statute; therefore printing could not be made an overt act of high-treason, and they were but servants and worked for their livelihood; the press was not their's, and what they did was through mere necessity, &c. therefore they hoped that they could not be found guilty of treason, for that it was never known that servants did suffer for their master's fault.

They were answered by the Court, that the matter contained in the Declaration was treasonable; and the question was, whether the intention of their minds were not to destroy the king by printing such treasonable libels and by sending of them abroad; for they would not print 10,000 of them to put them in their pockets, and printing treasonable books had always been accounted treason; yea, bare writing was treason too, and though printing in itself simply considered is no offence, yet printing of treason is an overt act,† and it must be left to the jury to consider, whether their minds were not concerned when they went about to print those treasonable libels; and as for their being servants, that was not proved, but if it had, that would no ways excuse them, for they were to be told that there were no accessaries in treason.

Then the Jury having considered of the evidence; after about an hour's time they brought this verdict, that they were both Guilty of high-treason.

When they received sentence, they desired Mr. Recorder to make a favourable report of their circumstances to the queen, how that they were poor men, and only worked for a living.

* So in the MS.

* So in the MS.

† See East's Pl. Cr. c. 2, § 86.

William Hendley, late of the parish of Chislehurst, in the county of Kent, clerk, George Campman, lately of the same, painter, Robert Hicks, lately of the same, labourer, Filiar Harding, lately of the same, packer, and Walter Prat, lately of the same, upholsterer, being evilly and seditiously disposed to the government of this kingdom, under our most excellent lord George, king of, &c. and averse to the happy establishment thereof, and wickedly desirous of gain, and most horridly and injustly intending to procure to themselves unlawful gains, under pretence of collecting charities, alms and gifts, for the sustenance and maintenance of boys and girls, viz. twenty boys, and thirty girls; on the 24th day of August, in the fifth year of our said king, did, in the aforesaid parish of Chislehurst, with several other ill disposed persons (to the Jury unknown), conspire and confederate with the said boys and girls, to wander up and down in Kent, and divers other parts or counties in England, in order to collect great sums for the aforesaid purposes. And, that the said William Hendley, George Campman, &c. in order to put their said wicked intentions in execution, did, on the 24th day as above-mentioned, at the aforesaid parish, with the said boys and girls (none of them being natives of that parish), wander, itinerate, and stroll to the said church; and there did assemble in the said parish-church at the time of divine service; and there, at the time of divine service, the said William Hendley (to prosecute his conspiracy, without any licence from the king, or legal authority) did incite and ask of the parishioners charities, alms, and gifts; though neither George Campman nor Walter Prat were church wardens, or otherwise officers of that parish, yet they did there, in divine service, unlawfully extort these charities amounting to the sum of three pounds, from Rowland Tryon and other inhabitants, to the great disturbance of divine service, at that time celebrating by George Wilson, rector of that church; to the great defrauding and cheating of Rowland Tryon, and the other parishioners; for a wicked and evil example of all offending hereafter in the same manner against the laws; and in contempt of our said king and his laws, and against the peace of the said king, his crown and dignity."

To which they pleaded Not Guilty.

JURY.*

Sir Thomas Roberts, of Cranbrook, bart.
William Honeywood, of Cheriton, esq.
Edward Gulston, of West Farley, esq.
Richard Lewin, of Lee, esq.
John Smith, of the same, esq.
Edward Hodsden, of Lewisham, esq.
John Sish, of Greenwich, esq.
William Clapham, of Eltham, esq.
William Simons, of Marden, esq.
Henry Wraigh, of Offspring, esq.
John Gore, of Minster.
John Batchelor, of Raynham, esq.

The Counsel were,

For the Plaintiffs.—Serjeant Darnell, Mr. Baynes, Mr. Marsh.

For the Defendants.—Serjeant Comyns, sir Constantine Phipps, Mr. Blondell.

Mr. *Marsh*, with a warmth, alleged, that in time charity schools might raise such sums of money, as to enable them to make head against the government; their drums beat to arms, and their trumpets sound a most dreadful alarm; the Protestant religion had its quarters beaten up at Chislehurst, and the terror had struck the head quarters in town; the sum of three pounds was raised even in that little parish, and suppose ten thousand parishes in England, from each of which if that sum was raised, it would be enough to bear the Chevalier's charges into Italy, and help him to consummate the marriage with the princess Sobieski, upon whom he might get new Pretenders, to the great disquiet of the Protestant interest; and that if a stop were not put to these proceedings, in time the clergy would grow up into friars mendicant; and then quoted several acts of parliament against vagrants, to prove the defendants were within the meaning of them; and shewed the illegality of collecting money without letters patents or briefs;* and then called the justices, constable, and others, to prove the bringing down the charity children to Chislehurst, the preaching, and collecting charity for them after they were forbid, &c.

The Defendants proved that they had the bishop's and incumbent's consent, by the oaths of John Reeves, William Moor, Richard Neeves, and Thomas Shackleton.

William Tryon, esq. and George Jefferies proved, that the justices were the authors of the disturbance.

To prove the archbishop of Canterbury preached at St. Dionis Back-church for the charity children of Shadwell, the reverend Mr. Hume, Mr. Tryon, captain Thomas Shackleton, and Richard Payne, were called who proved the same. And,

That the archbishop of York did the same, was proved by captain Thomas Shackleton.

Mr. Archdeacon Spratt† offered in evidence,

* The publisher of The Account of this Trial says, p. 43, "N. B. The Jury for the county was industriously set aside, and the above-mentioned were impannelled out of the Grand Jury." Note to Former Edition.

As to challenge of a juryman because he had been of the Grand Jury, which found the bill, see in this Collection Oates's two cases. Vol. 10, pp. 1081, 1227. See, also, vol. 13, p. 339.

* It is great pity this Trial was never taken down in short hand; it would have been very entertaining, as well as useful. *Former Edition.*

† Son of Atterbury's predecessor; as to whom see vol. 12, pp. 492, *et seq.* (Note. In p. 493, l. 16, the words 'Anniversary of the' should be inserted after the word 'first'), 1051, *et seq.*

that he had seen the House of Lords present at a sermon at Westminster, when a collection was made for poor children not thereunto belonging; and offered the three rubricks for the defendants' vindication,* viz. the last after the Nicene Creed, the first after the Offertory, and the last after the Communion service; but the judge over-ruled them, by urging, that the collection was restrained to a fixed time.

Serj. *Darnell* spoke chiefly relating to the acts of parliament made in the reigns of queen Elizabeth, king Charles 2, and queen Anne, made against vagrants and wanderers from their parishes, and insisted these collections were illegal; as did Mr. Baynes.

Sir *Constantine Phipps* insisted it was legal, as they had the bishop's and rector's licence; and that if what they had done was illegal, it was cognizable only in the ecclesiastical courts; and that if the House of Lords were present at such a collection, as Mr. Archdeacon Spratt had deposed, and that he had seen the late lord chancellor Cowper, and the late lord keeper Wright, encourage such collections, sure there could be no illegality in it; and then proceeded to shew the defendants were not within the several acts of parliament quoted; as did Mr. Comyns and Mr. Blondell, who insisted, that such proceedings would discourage charity-schools, and put an end to that noble institution, &c. and that there was no precedent for this proceeding.

The Judge summed up the evidence, and observed what dangerous consequences might happen from these collections; and was a little suspicious, that Mr. Hendley had cardinal Alberoni's leave, as well as the bishop of Rochester's, to make this collection, to carry on worse designs under the specious colour of advancing charity; and seemed confirmed in his suspicion, because the manner of collecting had some resemblance with that of the Cardinal's in Spain; for he laid a tax upon the people, which they were forced to pay, and gave it the specious name of a free-gift, alias charity. If this stratagem was to spread in England, by the subtile artifices of this political cardinal, the nation is in danger of paying double taxes. Upon the whole, the judge wished that he had his eleven brethren to consult with upon the bench; but as that was not possible, he directed the jury to bring in their verdict for the plaintiffs; when the jury went out, and returned in a few minutes with a verdict, Guilty; upon which the judge fined them 6*s.* 8*d.* each, and told them, if they did not like the verdict, they might bring a Writ of Error.

The counsel for the justices urged for a larger fine, for that the defendants had become plaintiffs in the bishop's court; and therefore prayed, that such a fine might be laid upon Mr. Hendley, &c. as might either satisfy the charges they should be at in the bishop's court, or make the opponents desist. But the judge refused their request, and told them, that should serve for the present; but if they came before him again, they should have their deserts.

We shall here conclude (the account of) this Trial with an original Letter wrote by sir Littleton Powys to the lord Parker lord chancellor, upon the occasion.

To his Excellency the Right Hon. THOMAS Lord PARKER, Lord High Chancellor of Great Britain, one of his Majesty's Lords Justices, London.

Henley, near Ludlow, Aug. 4, 1719.

My lord; I taking London in my way between Lewes and Kingston, came to your lordship's house the morning before I went to Kingston, but your lordship was then sitting. I did then intend to have informed your lordship of what occurred in the circuit thitherto, relating to the public, especially in Kent: and after I came from Kingston, I found your lordship was gone out of town; and before your return, I set out for my country concerns here in Shropshire, till near next term; so that what account I give your lordship must be by letter.

Though your lordship has heard how the verdict went in the trial at Rochester,* yet perhaps it may not be unacceptable to your lordship to have some abstract of the matter arising in it. It began at six in the morning, by my appointment, and held till twelve. The Court was very full of clergymen, and a great auditory; and I gave both sides liberty to expatiate as they pleased, especially the defendants, that they might not say but that they had a full and fair trial. Most of the witnesses for the prosecution were unwilling, and did prove the facts but meanly; but afterwards the witnesses for the defendants did, upon questioning, prove all the facts very fully upon all the defendants, viz. Hendley the preacher, the schoolmaster, and the two collectors, being all

* I suppose the following:

"Then shall the priest return to the Lord's Table, and begin the Offertory, saying one or more of these sentences following, as he thinketh most convenient in his discretion."

"Whilst these sentences are in reading, the deacons, churchwardens, or other fit person appointed for that purpose, shall receive the alms for the poor, and other devotions of the people, in a decent bason, to be provided by the parish for that purpose; and reverently bring it to the priest, who shall humbly present and place it upon the Holy Table."

"After the divine service ended, the money given at the Offertory shall be disposed of to such pious and charitable uses, as the minister and churchwardens shall think fit. Wherein if they disagree it shall be disposed of as the ordinary shall appoint."

* Occasioned by a Charity Sermon preached at Chislehurst by one Hendley of Islington. He died not long after. *Former Edition.*

who were served with process. Serjeant Comyns, sir Constantine Phipps, and Mr. Blondell, were counsel for the defendants. After an harangue upon the virtue of charity, and how essential to Christianity (though I thought the texts they cited proved another sort of charity, viz. Good-nature and good-neighbourhood, but I thought it not proper then to take notice of the distinction) they insisted chiefly,

1. That it would discourage all charity, and charity-schools, which would thus be in danger of subversion.

2. That every parson might order collections in his own parish, for what charities he pleased, especially if approved of by the bishop.

3. That the Rubric in the Communion-service, a common-prayer book being produced in court, does imply that the parson and the bishop are entrusted in collections of charity in the church; for it says, that if the parson and churchwardens disagree in the distribution the bishop shall determine.

4. That the parson of the parish, and also the bishop of Rochester, did give Hendley leave to preach this Sermon, for this purpose.

5. That though the Sermon was done, yet the prayer for the Holy Catholic Church at the Communion-table was not quite finished, as were not also the sentences for exciting charity, when Mr. Farrington, the justice of the peace, interrupted the collection.

6. That the two present archbishops have preached charity sermons, in London, for the children of other parishes there.

7. That there is no precedent of such an indictment ever before.

Too much time was spent on both sides, relating to what power the bishops had anciently in the distribution even of tythes and profits relating to the Church, and their rights to licence preaching, and to direct what is to be done in churches, and that laymen are not to intermeddle there.

Serj. Darnell, Mr. Baynes, and Mr. Marsh, were *pro rege*. The substance of what they all said is herein mentioned, intermixed with my own thoughts in my summing up to the jury.

I first said, That there were three things much insisted on by the defendants' counsel, and answered by the counsel on the other side, which I thought ought to be pared off, and put out of the case, viz.

1. All jealousy of discouraging all charity, and charity-schools; for that they remained just as they were before, as long as they kept within the bounds of their proper parishes. But this case was quite of a different nature, relating to arbitrary collections, and that in other parishes, and the coming of fifty boys and girls together begging for that purpose; and if this was practised, it might do more harm to charity-schools, by making them odious to their parishes, whose poor would be injured, by lessening the charity to them.

2. It ought to be put out of the case, whether Mr. Hendley was authorized to preach there, or not; for that I thought it the same case if the parson of the parish himself had then preached, [It was at my tongue's end, "if the bishop himself had preached," as indeed it was the same; but I thought it better not to beat the question by a supposal of the bishop's preaching] for that the preaching was not the point, being used only to excite giving; but the true point was, Whether the collection was without lawful authority; and therefore the collecting of it in the church is not a jot better, in point of law, than if the fifty boys and girls had stood at the market-place, and the collectors had there received the charity of all whom they could assemble about them.

3. Another matter I thought proper to be pared off (though so much debated on both sides), whether it was a crime (I suppose the crime suggested in the bishop of Rochester's court) to interrupt the collection before the prayer for the Holy Catholic Church, and the sentences for charity, were fully read; since they thought, that if such collecting is an unlawful act, the proper time to stop it is just when it begins, or soon after, as was done here by Mr. Farrington; for otherwise Common-prayer, or a sermon, might be used to justify and give a sanction to any unlawful act, and this stop might as well have been in the middle of the Common-prayer, or of the sermon, in case the unlawful collection had then begun: so that the true point is, whether the collection was unlawful: and upon that all the case depends.

As for the assertion, that every parson of a parish may order collections in his parish for charities, when and for what he pleases; I declared my opinion, that he could not; it not being any part of his function, like reading prayers, preaching, christening, burying, &c. and I knew not how he was made judge of the times and objects of all charities within his parish, though he might preach as much as he pleased upon the general duty of charity.

As to the rubric in the communion-service, I said, I thought that was to be taken 'secundum subjectam materiam, viz. the ordinary collection at the communion, which is ever then used to be made for the poor of that parish, but should not extend to every collection the parson should appoint for any foreign charity, and that I did not till now hear that the clergy did claim such a power. And farther, I said, that I thought those words of the rubric did not imply such a power in the parson: for the words being, "the money given at the offering shall be disposed of to such pious and charitable uses as the parson and the churchwardens shall think fit, wherein if they disagree, it shall be disposed of as the ordinary shall appoint;" such a power of appointing a collection at pleasure, is as much implied in the churchwardens as in the parson, for they have as much liberty to disagree from

the parson in the distribution, as the parson has to disagree from them; and so the churchwardens might also appoint collections for what charities they pleased: but that I thought that the parson and churchwardens, either jointly or severally, could not appoint any collection for charity otherwise than in common form for the poor of their own parish, and that those are the charitable uses intended by the rubric, and particularly at the communion, to the service of which those words of the rubric are subjoined. I hope your lordship, on reading that part of the rubric at the end of the communion-service, will be of my opinion, which I then suddenly declared, as to the implication, and do not since alter, unless otherwise convinced.

As to what was mentioned of the two present archbishops, it was for the poor of the same town, though of a different parish;* and all the circumstances of those cases do not now appear, nor were they litigated, as this case is.

As to the objection, That there is no precedent of such an indictment ever before: there never was such an attempt before, that fifty boys and girls should go into another parish, in another county, and make a kind of migration in such a body, really begging, though with great formality. And though much might be said (as the counsel for the king insisted) to bring them within the statute of vagrants, especially seeing the statute of 39 Eliz. c. 4, paragr. 2, says, That all persons calling themselves scholars, going about begging, shall be accounted vagrants; yet I judged it not proper to put the case upon that point, when I thought it so clear otherways, and fit so to be mentioned.

I also told the jury, that this case did consist of two parts; the first but particular, and the other very general.

As to the particular, it is relating to the maintenance of the poor, which is not of a spiritual nature, but a mere lay concern, and relating to the civil government; and the several acts of parliament do plainly esteem it as such, by ordering the rates and collections for the poor, and putting the whole management into the lay hands of the justices of the peace, and the overseers of the poor, who are to be nominated by the justices of the peace, and accountable to them, and by their directions to set the poor at work, if they thought proper; and therefore a justice of peace, being then in the church, might well take it to be a matter within his jurisdiction, and that he might stop such a new and extraordinary proceeding, newly begun among the clergy, relating to the maintenance of the poor, and a collection made by strangers, without the consent or assistance of the churchwardens or overseers of the poor of that parish.

But this case, if under a general consideration, is of a vast extent, and mighty consequence to the king and the people, and at which the very legislature may take great umbrage. The levying of money is the tenderest part of our constitution, and if it may be done arbitrarily, under the shew and form of charity, (which may comprise all good works and all good intentions) it cannot be said whither it may go; any more than it can be said whither these fifty boys and girls may go: for as, by the same reason, they may go into all the parishes in England, so collections, as for charities, may be set up in all the churches in England by the clergy, as often as they please: and though it be said, it is all but voluntary giving, yet it is a sort of compulsion, by the solemnity in the church, and vying with others, and being marked out, if refusing, or giving meanly.

In the time of Charles 1, the parliament took great offence at some attempts for free gifts to the crown; and we hear that cardinal Alberoni is now setting up the like all over Spain.

But besides, here in England no collection,* even for charity (unless for the poor of the same parish) is, by law, to be made, but by the leave and permission of the king, gathering of money being so nice a matter that it must not be done, even for charity, without his leave, in the most compassionate cases; and thence the ancient method of briefs under the great seal, has been used, even upon extreme great losses by fire. And the statutes of 4 and 5 of Anne have

* "Charity Sermons are preached in London frequently in the parish churches there, for the charity children of different parishes. The British charity-school on Clerkenwell-green have an annual Charity Sermon, preached before the stewards and gentry of the Welch feast, on the 1st of March, for their benefit, and generally at a different church each year, and are never molested." *Former Edition.*

* "In the year 1745, when the rebellion was on foot, at the several county meetings then held for subscribing sums of money to raise men, &c. for the defence of his majesty's person and government, several gentlemen, in different counties, objected to it, as against law; and that no money could be raised but by authority of parliament, or the king's licence, &c. But my lord chancellor Hardwicke, in his speech (when lord high steward) at passing sentence on the rebel lords, has these words, 'Men of property, of all ranks and orders, 'crowded in with liberal subscriptions, of their 'own motion, beyond the examples of former 'times, and uncompelled by any law; and yet 'in the most legal and warrantable manner, 'notwithstanding what has been ignorantly 'and presumptuously suggested to the con-'trary.'"—*Former Edition.*

See, also, the King's Speech, Dec. 5, 1782. Comm. Journals, April 2, 1778. St. 13 Car. 2, c. 4, s. 5. Lords' Journ. Aug. 1, 1746. Hatsell's Prec. vol. 3, pp. 71, 72.

"It is unlawful for people to go about the country and collect charity, unless they have letters patents." Per Powell, Just. Anon. 11 Mod. 221. See 4 Ann. c. 14.

put the whole management of briefs under the regulation of the Court of Chancery, and impower the laying great fines upon the offenders. But this method were giving a go-by to all royal licences, and putting it in the power of the clergy to do all acts of charity of themselves, at the expence of the people, and to be sole judges of the occasions, and to make what application and account they please.

I told the jury that I was very clearly of opinion, in point of law, this was a case of dangerous consequence, and was an invasion not only on the king's prerogative, but also upon the legislature, and that I thought the defendants Guilty.

The jury staid out but a little while, and brought them in all Guilty. I then told the defendants' counsel, that if they did not like my opinion, in point of law, they might bring their Writ of Error; and the indictment being so special, it did equal a special verdict, and they might have the opinion of a special court if they pleased.

I then set a fine of a noble upon each defendant, saying, it was so small only because it was made a question; but now that a verdict had settled it, there would be very heavy fines upon those who should presume to offend in like manner hereafter. Yet I heard that some gentlemen in the town had thereupon said, that I had been too favourable to them by so small fines: but it was far from my intention of any favour to them, but of service to the king; whereas, if great, it might have been said, that, while they were prosecuted for levying money on the people, the prosecution was only to levy money upon them, when it was really to settle the point: and great fines might have raised compassion, and perhaps a collection for them. It would be great satisfaction to me, if your lordship be of the same opinion with me, as to the smallness of the fines; I am sure I intended it for the best.

I gave Mr. Woodford a news-paper, wherein was an advertisement, which I thought very fit to be shewed to superiors: that the bishop of London had issued a circular letter to all his clergy to collect charities in their parishes for the poor vicarages in England, which I thought much a-kin to the late collection in Kent, or rather more dangerous, not only by raising a vast sum of money, (if the like in all dioceses) but also by marking out people how far affected to the Church throughout England, and casting some reflection upon queen Anne's bounty, and upon a beneficial explanation after by his present majesty, yet as if to be supported by begging: and this done in a time of taxes, which must appear the more heavy after such collections; and the clergy would thus gain a power of raising money as they please, and applying it as they please. How this project goes on, I know not; but sure it ought to be stopped: and for that purpose, a thing very apposite was mentioned in the debate of the late trial in Kent; that commonly about Christmas, when it is hard with the poor for want of work and snow, then the bishop of Lo a circular letter to the parishes of mortality, to make collection to be put into the hands of th But it was also alleged in the sa precedent to such circular letter the king sends a letter under his to that bishop, authorizing and so to do. This deserves to be e and if true, it is a case in point new letter of the bishop of Londo the king's licence.

A man of Rochester, worth m convicted before me of drinking the health. I ordered him to be whipp market, twice, till his back was blo month between the first and second

And at Lewes, a man of Rye wa before me for drinking the health of the 3rd, and saying, he knew no s as king George. He had run ou estate by looseness, and had nothing annuity of 30*l.* per annum for his fined him 100*l.* and committed him and that he would find good sureties good behaviour for three years next payment of the fine. I told him, tha paying 100*l.* to king George, he wo tainly know there is such a person.

Your lordship's notion, against sed state offender in the pillory, was certainly right, and did so convince me, that I have since ordered corporal or pecuniary pu ments upon them, as having a better effect shameless people, and without giving the an opportunity to be troublesome.*

I declared in all my charges in this circ as I did the two last terms at Westminster, th the number of base libels, and sedition pape is intolerable, and that now a quicker cou will be taken about them; for that new government will not be so much troubl himself to find out the authors of them, as often as any such papers are found the tables of coffee-houses, or other pu houses, the master of the house shall be a swerable for such papers, and shall be prose ted as the publisher of them, and let him f out the author, letter-writer, or printer, a take care, at his peril, what papers he takes

This last was a maiden circuit, which h not been known before, and is to be attributed the late good law of transportation, which is w put in execution in the counties near Lond whence transporting is easy, but not so well other parts of England. The Treasury was save much money, partly by paying fewer re wards of 40*l.* and partly by not long maintain ing fellows in gaol, if some rates were agreed t be given to merchants to carry them o speedily.

Your lordship's order of notification, to th justices of peace, had a very good effect, fo they appeared much better, this circuit tha

* See vol. 14, p. 446.

merly, especially in Surry; where I told that I would request your lordship, that would please to acquaint his majesty at his pleased to make known, how very well in particular, his justices peace in Surry had appeared, upon his pleasure being notified to them for that purpose.

did, in all my charges, inform the audience he occasion and necessity of that notification, that there was grown a sort of general neglect all over England, of the appearance of the tices of peace at the assizes, when the lges had often matters to inform them of, by mmand of his majesty; and trials of felons re often imperfect by the non-attendance the committing justice of peace; and that eir attendance was a respect due to the king d his government, upon those solemn occaons: and that it is no hardship upon them; ere being three excuses, which will be readily dmitted, if upon the call mentioned to the ourt, barely upon the word of some other jusce, or proof upon oath by some other person, iz. 1. If not fit to travel, by age or want of ealth. 2. If living out of the county. 3. If then actually out of the county. But if justices of peace shall remain at home, about their private affairs, or to avoid the trouble of a journey to the assizes, it ought to be looked on as a neglect of the duty of their office: for they are not called only to notify to the people that they are in commission, but to answer to their names in person.

Many of those in commission do not act, and have not taken the oath of office: whereupon I ordered, in open court, each clerk of the peace, against next term, to transmit to your lordship a list of such as reside in the county, and refuse to act; yet that he does, in the mean time, know of them, if they persist in such refusal; that so it may be their own doing, if they are put out of the commission, after his majesty's favour to them in being put in.

I fear I have tired your lordship with this long, though abridged, account: but your lordship's pardon will be an addition to all your former favours to, My lord, your lordship's most faithful and most humble servant,

LITTLETON POWYS.

END OF VOL. XV.

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